

United States
Court of Appeals
for the Ninth Circuit.

SAMUEL H. FRIEND, S. HERBERT FRIEND, LEONARD V. BLOCK,
Co-Partners, Doing Business Under the Firm Name and Style of
S. H. Friend, and Feature Ring Co., Inc.,

Appellants,

vs.

GRANAT BROS., a Corporation,

Appellee.

GRANAT BROS., a Corporation,

Appellant,

vs.

SAMUEL H. FRIEND, S. HERBERT FRIEND and LEONARD V.
BLOCK, Co-Partners, Doing Business Under the Firm Name and
Style of S. H. Friend and Feature Ring Co., Inc.,

Appellees.

HERBERT BROWN and FEATURE RING CO.,

Appellants,

vs.

GRANAT BROS., a corporation,

Appellee.

GRANAT BROS., a corporation,

Appellant,

vs.

HERBERT BROWN and FEATURE RING CO., INC.,

Appellees.

Transcript of Record
IN FOUR VOLUMES

Volume II
(Pages 87 to 414)

APR 5 1950

Appeals from the United States District Court,
Northern District of California,
Southern Division.

WILLIAM B. O'BRIEN,
CLERK

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Appeals from the United States District Court,
Northern District of California,
Southern Division.

In the Southern Division of the United States
District Court for the Northern District of
California

Before: Hon. Dal M. Lemmon,
Judge.

No. 28219-H

GRANAT BROS., a corporation,

Plaintiff,

vs.

SAMUEL H. FRIEND, S. HERBERT FRIEND
and LEONARD V. BLOCH, co-partners, doing
business under the firm name and style of S. H.
Friend,

Defendants.

No. 28220-H

GRANAT BROS., a corporation,

Plaintiff,

vs.

HERBERT BROWN, an individual,

Defendant,

and

FEATURE RING CO., INC.,

Intervening Defendant.

Appearances:

For the plaintiff

OSCAR A. MELLIN, ESQ.

For the Defendants

JAMES M. NAYLOR, ESQ., and

JOHN VAUGHN GRONER, ESQ.

PROCEEDINGS

* * *

JOSEPH GRANAT

called on behalf of the plaintiff, sworn.

* * *

Direct Examination

By Mr. Mellin:

Q. Will you give your name, age and residence,
Mr. Granat? A. Joseph Granat.

Mr. Naylor: Pardon the interruption but may
we go over to the jury box, your Honor?

The Court: You may.

A. I was born in 1886. I live in San Francisco,
at 3435 Anza Street.

Q. What business are you in, Mr. Granat?

A. Manufacturing and retailing jewelry business.

Q. What firm are you associated with?

A. Granat Bros.

Q. Is that the plaintiff here? [4*]

A. Granat Bros.

* Page numbering appearing at top of page of original certified Transcript of Record.

(Testimony of Joseph Granat.)

Q. That is the plaintiff in this action?

A. Yes.

Q. And that is a corporation of California, is it, Mr. Granat?

A. Yes.

Q. And was that the direct successor in interest of Granat Bros., a copartnership?

A. We were partners, and then we incorporated in 1927.

Q. And when did the Granat Bros., a copartnership, commence business in manufacturing jewelry in San Francisco?

A. Well, we began in 1906.

Q. And your factory is where?

A. In San Francisco.

Q. And your factory is where?

A. In San Francisco.

Q. Yes. Your factory is located here?

A. Located here.

Q. And do you or do you not also maintain retail jewelry stores?

A. Retail jewelry stores.

Q. And where are they located, please, with reference to towns?

A. Two in San Francisco and one in Oakland.

Q. And what is the principal product which the Granat Bros. manufacture?

A. Engagement rings and wedding rings.

Q. And are those sold, those wedding rings and engagement [5] rings, solely through your retail stores?

A. Solely through our retail stores.

Q. And are they also sold in other States?

(Testimony of Joseph Granat.)

A. Yes, sir.

Q. And do Granat Bros. sell those directly or indirectly in other States?

A. Well, we sell them through the Granat Manufacturing Company.

Q. And the Granat Manufacturing Company is the fictitious name and style of L. A. Giacobbi and Company? A. Yes, sir.

Q. Now, there are two stockholders of Granat, of Granat Bros., isn't that correct, yourself and Mr. Leo Granat? A. That is correct.

Q. And the L. A. Giacobbi Company stock is owned jointly by—pardon me for leading him; I am trying to save time.

Mr. Naylor: Go right ahead.

Mr. Mellin: I know that that is not contended.

Q. —Mr. Joseph Weinroth, yourself and Mr. Leo Granat? A. That is correct.

Q. Now, the L. A. Giacobbi Company is a corporation at present, is that so?

A. That is right.

Q. And they are the direct successor of the copartnership? A. That is correct.

Q. And that copartnership was yours, Mr. L. A. Giacobbi's, [6] Mr. Weinroth's and Mr. Leo Granat's? A. That is right.

Q. And that copartnership was a direct successor of the L. A. Giacobbi Company, which was a copartnership of two Giacobbis and Mr. Weinroth?

A. That is correct.

Q. Now, how long have you been selling your

(Testimony of Joseph Granat.)

rings outside of the local area through this Granat Manufacturing Company?

A. Oh, through the L. A. Giacobbi Company or the Granat Manufacturing Company?

Q. Well, the Giacobbi Manufacturing Company and their successor.

A. For at least 33 or 34 years.

Q. And they exclusively distribute your diamond rings manufactured by Granat Bros.?

A. That's right.

Q. And do you know the area over which they distribute your rings?

A. All over the United States.

Q. Now, commencing in the year 1934, what was the products which Granat Bros. manufactured at that time?

A. Engagement rings and wedding rings.

Q. Will you state whether or not you manufactured an engagement ring and wedding ring ensemble? That is, a set?

A. Yes. [7]

Q. And you subsequently adopted the trade-mark "Wed Lok" for that set, is that correct?

A. That is correct.

Q. And when was that trade-mark adopted by Granat Bros.?

A. Well, either the latter part of 1933 or early in 1934.

Mr. Mellin: And, if your Honor please, may I tell the reporter that when I speak of "Wed Lok" in connection with Grant Bros. rings, it is spelled

(Testimony of Joseph Granat.)

“W-e-d-L-o-k,” so that we don’t have any confusion between the spellings.

Mr. Groner: How about a hyphen?

Mr. Mellin: Well, we use it with and without a hyphen.

Q. And will you state whether or not that trade-mark in any fashion was applied to rings manufactured and sold at that time? A. Yes.

Q. And in what fashion was it applied, if you know?

A. Well, we just—we were working up these ensemble rings, and we gave it the name “Wed Lok,” gave it to some sets, the name “Wed Lok.”

Q. By application of the trade-mark, Mr. Granat, I mean actually applying the trade-mark to the goods or to a label or a box. Was it applied in any fashion, the name “Wed Lok,” to rings?

A. Oh, yes.

Q. In what way, please?

A. Well, many ways.

Q. Can you name them? [8]

A. You mean like applied to the ring, like marking the ring or boxes or advertising?

Q. Yes.

A. Well, all those things. We have used every method we could to apply it.

Q. Was the trade-mark at any time engraved in one of the rings, of the set itself?

A. Well, we stamped them with the name “Wed-Lok.”

(Testimony of Joseph Granat.)

Q. Well, I beg your pardon. I didn't know the difference.

Mr. Groner: The defendant doesn't contest that phase of the matter, Mr. Mellin.

Mr. Mellin: Pardon?

Mr. Groner: The defendant makes no contest of that phase of the matter.

Q. (By Mr. Mellin): I hand you a set of a diamond ring ensemble, consisting of an engagement ring and a wedding ring, and will you tell me if you can identify that (handing to witness)?

A. That is one of our Wed Lok sets.

Q. And when was that design of Wed Lok set manufactured and sold?

A. That was one of our early sets. Personally, I couldn't just tell exactly the date, but it was one of our earlier designs.

Q. Could you approximately place the year? [9]

A. Well, let's see—oh, I wouldn't say—1938 or '39, along those years. I couldn't say exactly. We make different designs.

Mr. Mellin: I offer that in evidence, your Honor, that Wed Lok set in evidence, as Plaintiff's Exhibit A.

(The ring set referred to was received in evidence and marked Plaintiff's Exhibit A.)

Q. (By Mr. Mellin): I hand you a second set of diamond ensemble and ask you if you can identify these and tell us approximately when they were

(Testimony of Joseph Granat.)

manufactured and sold by the plaintiff (handing to witness).

A. Well, it was at least ten years ago, something like that. I can't tell you the exact date.

Q. And are they marked "Wed Lok"?

A. "Wed Lok," yes.

Q. And do you have other designations for your rings, such as series designations?

A. We give some of them names, others numbers.

Q. Do you recall what series or number that was (indicating)?

A. Well, we used to call this set a Wed Lok set, and then to identify it we would call it a Gondolier or give them numbers or something.

Q. What was the secondary identification? What was the purpose of that, Mr. Granat?

A. Well, just to identify it. Sometimes we used a name, other times a number. [10]

Mr. Mellin: May I offer this second set, identified by the witness, in evidence as Plaintiff's Exhibit B?

(The ring set referred to was marked Plaintiff's Exhibit B.)

Q. (By Mr. Mellin): I show you a third set, ensemble, of diamond ring, and ask you if you can identify it (handing to witness). A. Oh, yes.

Q. And what is it, please?

A. Well, we call this the "Interlocking" series. It was a series——

(Testimony of Joseph Granat.)

Q. And was it or was it not known under the trade-mark "Wed Lok"? A. Yes.

Q. And when, if you can tell us approximately, was that set manufactured and sold?

A. Well, we started to manufacture that type of ring about 1936 or 1937, something like that.

Mr. Mellin: May I offer that in evidence as Plaintiff's Exhibit C, your Honor?

(The ring set referred to was received in evidence and marked Plaintiff's Exhibit C.)

Q. (By Mr. Mellin): I hand you a fourth set, ensemble, and ask if you can identify it (handing to witness).

A. Well, this one here, this was a series, and we named this [11] the Nanette series.

Q. Was it known under the trade-mark "Wed Lok"? A. "Wed Lok," yes.

(The ring set referred to was received in evidence and marked Plaintiff's Exhibit D.)

Q. (By Mr. Mellin): And I hand you a fifth set and ask you to identify it (handing to witness). What is that, please?

A. That was a regular Wed Lok series. This one has a number. We designated this by a number.

Q. Now, with respect to all of these rings, are they being manufactured and sold by Granat Bros. at this time? A. Yes.

Q. And do you know whether or not they have

(Testimony of Joseph Granat.)

the word "Wed Lok" stamped within one of the rings of the set? A. Yes.

Q. And to your knowledge was or was not the word "Wed Lok" stamped into those sets at the time of the manufacture during the various periods with which we are concerned? A. Yes, sir.

(The ring set referred to was received in evidence and marked Plaintiff's Exhibit E.)

Q. (By Mr. Mellin): Will you state whether or not the Granat Bros., because of their retail business, did any advertising of their diamond ring ensembles which you have designated as "Wed Lok"?

A. Yes.

Q. And what sort of advertising was that for the retail store, Mr. Granat?

A. Newspaper mainly.

Q. And can you recall offhand what papers?

A. The Examiner, mainly; we had, I think we advertised them in the Call, the Daily News, but mainly the Examiner.

Q. I hand you a bound volume of what appears to be individual ads; that is, photostatic copies of full-page ads of newspapers, showing advertisements thereon, and I ask you if you can identify them (handing to witness).

A. I can, yes.

Q. And I call your attention first to the ad here and ask you if you would read into the record the date of it, please. A. If I——

Q. Can you read the date that is given thereon?

(Testimony of Joseph Granat.)

A. August 5. Is that the date? August 5, 1934.

Q. That is correct. And all of these ads, to your knowledge, appeared in the local papers?

A. Yes, sir.

Mr. Mellin: May I offer that group of copies of advertisements of "Wed Lok" ensembles in evidence?

The Clerk: Plaintiff's Exhibit F.

(The copies of advertisements were received in evidence and marked Plaintiff's Exhibit F.)

Q. (By Mr. Mellin): By the way, Mr. Granat, how did you happen to adopt the word "Wed Lok" for this ring?

A. Well, I heard the name mentioned in a wedding ceremony. I was at a wedding and heard the name in the ceremony.

Q. At any time during the period from 1934 to the present time did you—and you are manufacturing these rings at the present time, isn't that so?

A. Manufacturing them now. [13-A]

Q. Now did Granat Bros. at any time discontinue the manufacture of Wed Lok rings?

A. Never discontinued them, no, sir.

Q. And during the war, the late World War, did you still manufacture and sell Wed Lok rings?

A. We did, yes.

Q. And, say, during the years of the war, was the production and sale of Wed Lok rings—how would you compare it in volume to, say, prior to the war and subsequent to the war?

(Testimony of Joseph Granat.)

A. Well, our production fell off, but I think the relationship is there, Wed Loks to regular production.

Q. Would you know in round figures of money the retail sales of rings which were marked and sold as Wed Lok in your retail stores from the year 1934 to the present? Do you have a note of that?

A. I do; approximately \$2,000,000 worth.

Q. That is, of Wed Lok rings, marked and sold as Wed Lok ensembles? A. Yes.

Q. I show you page 86 of the July issue of the Pacific Goldsmith, and call your attention to an ad appearing thereon (handing to witness); and I ask you if you saw that ad? A. Yes, sir.

The Court: You said July issue; what year?

Mr. Mellin: I beg your pardon, your Honor; 1948.

Q. And is that trademark of which Granat Bros. complained here, [14] "Feature Lock"?

A. Yes.

Mr. Mellin: May I offer that in evidence, your Honor, that page, as Plaintiff's Exhibit next in order?

The Clerk: That will be G.

(Magazine page from Pacific Goldsmith referred to above was thereupon received in evidence and marked Plaintiff's G.)

Mr. Mellin: And I show you a tear sheet—

Mr. Naylor: Just one page?

Mr. Mellin: Yes.

(Testimony of Joseph Granat.)

Q. I show you a tear sheet of the Salinas Californian, dated Friday, July 16, 1948; and I call your attention to an ad by Herbert Brown, credit jeweler, and ask you if you have seen that advertisement (handing to witness). A. Yes.

Q. And does that display the trademark of which you are complaining here, "Feature Lock"?

A. Yes, sir.

Mr. Mellin: May I offer that tear sheet?

Mr. Groner: May I see it first?

Mr. Mellin: I beg your pardon. I offer that tear sheet as Plaintiff's next in order, your Honor.

The Clerk: Plaintiff's H.

(Tear sheet of Salinas Californian referred to above was thereupon received in evidence and marked Plaintiff's Exhibit H.) [15]

Q. (By Mr. Mellin): I show you the issue of Jewelers' Circular Keystone of May 8, 1948, and I call your attention to an advertisement appearing on page 68 and ask you if you have seen that before (handing to witness)? A. I have.

Q. And is that a use of the trademark, "Feature Lock," that you are complaining of?

A. Yes.

Mr. Mellin: Now I offer that page in evidence as Plaintiff's next in order.

Mr. Groner: May I see it? What is the date?

Mr. Mellin: I am sorry, May 8, 1948.

The Clerk: Plaintiff's I.

(Testimony of Joseph Granat.)

(Page 68 of May 8, 1948, issue of Jewelers' Circular Keystone referred to above was thereupon received in evidence and marked Plaintiff's Exhibit I.)

Q. (By Mr. Mellin): Now I show you pages 34 and 35 of the November issue, November 1948, of the Jewelers' Circular Keystone, and ask you if you have seen that ad as that appeared (handing to witness)? A. Yes.

Q. And that shows the name, "Feature Lock," of which you are complaining? A. Yes, sir.

Mr. Mellin: I offer those two pages in evidence, if your [16] Honor please, as Plaintiff's next in order.

The Clerk: J.

(Pages 34 and 35 of November 1948 issue of Jewelers' Circular Keystone referred to above was received in evidence and marked Plaintiff's Exhibit J.)

Q. (By Mr. Mellin): I hand you what appears to be a soft copy of registration trademark, registration No. 430436, to Granat Bros., with the trademark, "Wed Lok," and ask you if that is the copy of the registration? A. Yes, sir.

Mr. Mellin: May I offer that in evidence as Plaintiff's next in order, your Honor?

The Clerk: Exhibit K.

(Soft copy of registration No. 430436 re-

(Testimony of Joseph Granat.)

ferred to above was received in evidence and marked Plaintiff's Exhibit No. K.)

Q. (By Mr. Mellin): Now, Mr. Granat, during your deposition, you testified as to the purchase of two trademark registrations. One is No. 85365, "Wedlock," W-e-d-l-o-c-k, one word; and "Wed-luck," trademark registration No. 1411415, and I show you copies of those registrations, and ask if those are the two you purchased (handing to witness)?

A. Yes, sir.

Mr. Mellin: Shall I put in the proving papers?

Mr. Groner: We do not admit title to the early one.

Mr. Mellin: All right. [17]

The Clerk: Pardon me, are you offering those in evidence?

Mr. Mellin: Yes, next in order; what are the numbers, Mr. Clerk?

The Clerk: "Wed-luck" will be L, and "Wed-lock" will be M.

(Registration certificates "Wed-luck" and "Wedlock" referred to above were thereupon received in evidence and marked Plaintiff's Exhibits L and M respectively.)

Q. (By Mr. Mellin): Will you tell us something about the purchase of the trademark "Wed-lock" from Strauss & Strauss, Mr. Granat?

A. Well, we knew he owned the "Wedlock," the

(Testimony of Joseph Granat.)

trademark "Wedlock," and we purchased it from them.

Q. Had you used the word "Wed Lok" before you knew of the Strauss & Strauss registration?

A. Yes, sir.

Q. And when you learned of that, what did you do?

A. Well, we purchased it; we made an attempt to purchase it and they sold it to us.

Q. Now I show you what appears to be a document labeled "Assignment and transfer of trademark" and which is dated the 12th day of March, 1936, and I ask you if that is the paper upon which you base title to that registration of "Wedlock"?

A. That is correct.

Mr. Mellin: May I offer that next in order, your Honor?

The Clerk: N. [18]

(Assignment and transfer of trademark dated March 12, 1936, referred to above was then received in evidence and marked Plaintiff's Exhibit N.)

Q. (By Mr. Mellin): And I also hand you a document labeled "Assignment of registered trademark, trademark "Wed Lok," and ask you if that is the document upon which you base your claim to ownership of the registration of the trademark "Wed Lok"?

A. That's right.

Q. And what was the purpose of it? You had

(Testimony of Joseph Granat.)

been using the name "Wed Lok" as a trademark since 1934; what were the circumstances that led you to purchase these marks and the reason for it, if you will tell the court, please?

The Clerk: O.

(Assignment of registered trademark for "Wed Lok" referred to above was thereupon received in evidence and marked Plaintiff's Exhibit O.)

The Witness: Well, I stopped at the owners—I purchased it—I didn't want to infringe on something that I didn't own.

Q. Had you known of these marks or the use of them, before? A. Never.

Q. Before you learned of the registrations?

A. Never.

Q. Had you ever seen any wedding rings or engagement ring ensembles marked with those trademarks before you adopted your mark? [19]

A. No.

Mr. Mellin: That is all.

Cross-Examination

By Mr. Groner:

Q. Mr. Granat, you testified that you adopted the trademark "Wed Lok" because you had heard that expression used in a wedding ceremony?

A. That is correct.

Q. Was that the only reason you adopted it?

(Testimony of Joseph Granat.)

A. Well, we had rings that we felt that the name fitted, ensemble rings that we were making.

Q. What do you mean, "the name fitted," Mr. Granat?

A. Well, it was appropriate, I would say.

Q. Was it not descriptive, Mr. Granat?

A. Not necessarily.

Q. I am not sure I understand your meaning, "not necessarily." Wasn't the word "Wed Lok"—wait until I finish, please—wasn't the word "Wed Lok" descriptive of the type of ring that you were making and selling commencing in 1934, and extending with some interruptions up until today?

A. We had rings that fitted together. They sort of cling together, and the name was appropriate.

Q. And the name described the function of those particular rings, did it not?

A. Not necessarily.

Q. Didn't those rings interlock? [20]

A. They did not; they fitted; they did not interlock.

Q. Didn't you use the expression that they "interlocked"? A. Yes, we used the expression.

Q. Didn't you constantly and reiteratedly use the expression that they interlocked?

A. We did in our ads, yes.

Q. Well, now, I am going to refer you to several of those ads.

Mr. Groner: I apologize to your Honor for taking so long, but there are a great many of these

(Testimony of Joseph Granat.)

things, and it is somewhat difficult to find our way around.

Q. (Continuing): Do you recognize as one of the ads of Granat Bros. (handing to witness)?

A. Yes.

Mr. Groner: I am pointing now, if it please your Honor, to Defendant's Exhibit 47, introduced during the taking of the San Francisco depositions. I assume it is duplicated in that list you have, but I have no possible means of cross-referencing.

Q. Now, Mr. Granat, I call your attention to this expression, and I am quoting from the advertisement, "The rings interlock, as it were, but this is due to design features, and is in no way dependent upon any special mechanical device. The idea suggested the name 'Wed Lok,' and by this name the rings already are known from coast to coast."

Is that a correct statement of the facts?

A. Yes. [21]

Q. Now you have, since that date—and incidentally, that was November 1, 1936—used the word descriptively, have you not, Mr. Granat?

A. Yes, sir.

Mr. Mellin: Just a moment; your Honor, I object to that question, "used the word descriptively" in what sense? Certainly they have used the word descriptively in their advertisements. I mean, the word "lock" and "interlock" and "locking." Now that is a question of law that this court has got to decide, not this witness.

(Testimony of Joseph Granat.)

The Court: I think so.

Q. (By Mr. Groner): Isn't it the fact, Mr. Granat, that you have used the word "Wed Lok" as synonymous with "interlocking" or "lock-engaging" wedding and engagement rings?

A. We have used it for rings that interlocked or fit together or cling together.

Q. And you haven't used it for any other purpose, have you, Mr. Granat?

A. What do you mean by "any other purpose"?

Q. You haven't used it for any rings that did not interlock, have you?

A. I can show you by exhibition, if you want me to show you, and see whether they——

Q. Just answer my question, Mr. Granat; I asked you——

A. Well—— [22]

Q. What is your answer to that question that I asked you?

The Court: What is your answer to the question, then, Mr. Witness?

The Witness: Well, if I can tell you by—let's see if I can——

(Mr. Groner handed exhibits to witness.)

The Witness: I am not mechanical. Here is a ring, a very popular ring, the "Nanette" series. You see, you just (indicating)—I don't know what you can call them. You can call them interlocking.

Q. (By Mr. Groner): You have called them interlocking, have you not, Mr. Granat?

A. Yes, I have called them that. Here the rings

(Testimony of Joseph Granat.)

are; they don't necessarily lock, or they don't interlock. We call them interlocking, yes, we did.

Q. And the advertisements have constantly referred to them in a descriptive sense, have they not, Mr. Granat? A. Oh, yes.

Q. Now I should like to refer you for just a moment—do you know Mr. Giaccobi?

A. I knew him.

Q. In Portland, Oregon?

A. Oh, in Portland, Oregon—yes, that is correct.

Q. Is he a customer of the plaintiff here?

A. Yes. [23]

Q. You normally furnished your customers with advertising mats, did you not?

A. That is correct.

Q. I hand you a photostat of Plaintiff's Exhibit Giaccobi 23 (handing to witness) and I ask you if you have ever seen that before.

A. That is not our ad. I don't know whether I have seen it or not, this particular ad.

Q. It is the ad of your customer, M. Giaccobi, is it not? A. Yes.

Q. And it is an advertisement of Wed Lok rings, manufactured by Granat Bros., is it not?

A. Yes.

Q. Have you seen that particular format?

A. I can't say.

Q. Did you authorize Mr. Giaccobi to place ads of that type?

A. He could if he bought our rings, and he advertised them.

(Testimony of Joseph Granat.)

Q. Now the statement appears in that advertisement: "These are the rings that Wed Lok together."

Is that a correct statement?

A. That is his statement.

Q. Isn't it a correct statement of the facts?

A. That is his statement.

Q. I asked you if it isn't a correct statement of the facts.

A. That is his statement. I don't know. We let these fellows—— [24]

Q. Is it in any sense incorrect, Mr. Granat?

A. Let's see that again. I don't know. That is his affair. I have nothing to do with his ad.

Q. Don't you furnish that to him, don't you furnish those mats?

A. Well, he changes them. We don't—this is not our mat. He changes them around. He does anything he wants to with them. I don't know about his advertising business.

Q. Isn't that advertisement perfectly consistent with various other advertisements which Granat Bros. has issued?

A. I don't follow his ads. We give them certain terms, and sometimes they use them, sometimes they use all of them, and sometimes they don't. They can do anything they want with them. I am not his advertising manager. They can do anything they want with them.

Q. I asked you if it is—his advertisement—

(Testimony of Joseph Granat.)

perfectly consistent with the other advertisements issued by Granat Bros.

A. I don't know. I don't know what you are driving at.

Q. It is perfectly simple what I am driving at; unless we misunderstand each other, I am driving at showing this, that Granat Bros.' use of the word "Wed Lok" has never been anything but descriptive. Now do you controvert that statement or will you admit it?

A. Well, I don't know; I don't know what——

Q. Isn't it the fact that from the very inception, Granat Bros. had used the word "Wed Lok" descriptively? [25]

Mr. Mellin: If your Honor please, what this term "descriptive" is, is a question of law, and under the circumstances, all of the advertisements are going into evidence.

The Court: Yes, I think so.

Mr. Mellin: And I object to this argument with the witness as to what it means, the meaning of the word "descriptive" in a legal viewpoint; that is improper, and I strenuously urge that objection.

The Court: Yes.

Q. (By Mr. Groner): Mr. Granat, you have introduced here as Defendant's—or Plaintiff's Exhibits (excuse me)—A to E, five types of Wed Lok rings, is that correct? A. Yes.

Q. And you personally took out patents on those types, didn't you?

(Testimony of Joseph Granat.)

A. No, I took out the patent—we bought the patent. We bought the Wed Lok patent.

Q. I am not talking about trademarks, Mr. Granat. I am talking about the patents. You took out letters patent in the U. S. Patent Office for the different designs which you have shown in Plaintiff's Exhibits A through E, isn't that correct?

A. We took out——

Q. Not "we"—you.

A. All right, I took out probably two patents, two or three of them. I don't know. [26]

Q. Well, now, I hand you a patent issued to Joseph Granat, No. 1982864, and ask you if you are not the Joseph Granat who is the patentee there (handing to witness).

A. That is correct.

Mr. Mellin: If your Honor please, I don't see the materiality of this. There is no question but that some of these rings are patented, and we don't contest that. I don't see the materiality, whether they are patented or unpatented, as far as whether the trademark "Wed Lok" is infringed or pirated, by the word "Feature Lock." I don't see the materiality of that. That has no reference to the trademark.

Mr. Groner: Well, if it please your Honor, of course this is not a patent suit; there are no patents directly involved, and they are collateral. However, I expect to show by these patents, taken out in the name of this witness, the word "locking"

(Testimony of Joseph Granat.)

and "interlocking" is constantly used in the descriptions of the structure shown in Exhibits A through E, and thus buttress my contention that the words are used solely descriptively.

Mr. Mellin: If your Honor please, we will stipulate on the record that in the body of the ads the rings are described as "locking together" and "interlocking" and so they do in the patents. We are raising no objection to such a description in the ads of the pirating defendant. All we ask—and we say under the *Miracle Whip* case, that there should not be used in a [27] trademark sense, as we have used "Wed Lok."

Now we have no objection—there is no issue here—that some of these rings don't lock together mechanically. We agree to that. We have no objection to this defendant or anyone else describing their rings in the body of the advertisement or in any other fashion, as interlocking or locking together or having a lock. That is not at issue. We have no objection. All we are objecting to is the use of the word "lock" in combination with another letter in a trademark sense, under the authorities.

The Court: The objection is overhauled. The admission you have just made is sufficient. [28]

The Court: The objection is overruled. The admission just made sufficient?

Mr. Groner: Substantially, may it please your Honor. For the purpose of the brief and belaboring

(Testimony of Joseph Granat.)

the question further I should like to introduce these four patents.

The Court: They will be received.

Mr. Groner: As Defendants' Exhibit No. 1, Groner patent No. 1982864.

(The patent referred to was received in evidence and marked Defendants' Exhibit 1.)

Mr. Groner: As Defendants' Exhibit No. 2, Granat Patent No. 2016492.

(The patent referred to was received in evidence and marked Defendants' Exhibit 2.)

Mr. Groner: As Defendants' No. 3, Granat Patent No. 2059228.

(The patent referred to was received in evidence and marked Defendants' Exhibit 3.)

Mr. Groner: And as Defendants' Exhibit No. 4 Granat Patent No. 2061655.

(The patent referred to was received in evidence and marked Defendants' Exhibit 4.)

Mr. Groner: I mention in connection with these, if it please your Honor, that each one of them refers to the interlocking or locking of the two rings together. [29]

Q. Now, Mr. Granat, you testified you did file a registration, No. 43046, for "W-e-d hyphen L-o-k"—no, please delete the hyphen; that is not in the registration. That is correct, is it not?

A. Let me see it.

(Testimony of Joseph Granat.)

Q. That registration to which I refer is Plaintiffs' Exhibit K. You personally signed the petition which accompanied that application, did you not, Mr. Granat? A. That is my signature.

Q. And you also signed the statement that accompanied that application, did you not?

A. That is my signature.

Q. And you also signed the declaration?

A. That is my signature.

Q. Now, I point to the petition which you signed and I call your attention to the fact that you there requested that the name, the trade-mark, together with the accompanying statement and declaration may be registered in the United States Patent Office in accordance with the Act of February 20, 1905. That was originally there when you signed that? A. There is something——

Q. Yes, I am coming to that.

A. This March 20, 1920——

Q. I understand.

A. Yes, both, I signed; one was crossed out. [30]

Q. Exactly. But it was written in accordance with the Act of February 20, 1905?

A. It was crossed out and then there was something else——

Q. Yes, I understand.

A. Well, that is it.

Q. Now, you followed the prosecution of that application, did you not?

A. What do you mean by that?

(Testimony of Joseph Granat.)

Q. Well, you talked to your attorney about it?

A. Well, they know more about it than I do.

Q. Yes, I understand. That is why you businessmen have to put up with us. But aside from that—I hope I haven't finished yet, Mr. Granat—you followed the prosecution of that application?

A. I don't know. I signed it, the attorney handed it to me, he OK'd it and I signed my name. I don't know the contents of it.

Q. But you thereafter followed what happened, didn't you?

A. I don't know. We just went along and manufactured rings. I am not an attorney. That is why I hired an attorney.

Q. When the attorney filed it in the Patent Office didn't he tell you about it?

A. I suppose he did. He must have.

Q. Didn't he tell you—and this appears as page 5 of what I shall introduce as Defendants' Exhibit No. 5—didn't he tell [31] you that the Patent Office had refused to register the mark under the Act of February 20, 1905, on the ground that it was descriptive of the goods?

A. I don't know anything about it.

Q. Did he show you a communication like that?

A. He might have. I can't remember these things. I don't know.

Q. Did you authorize him thereafter to file an amendment in the Patent Office in this proceeding?

(Testimony of Joseph Granat.)

A. If he did I must have authorized him. I don't know.

Q. —taking the thing out from under the Act of 1905 and putting it under the Act of 1920? There is the—(exhibiting document to witness).

A. I don't remember the document. I went according to my attorney's advice, whatever he told me—

Q. You authorized your attorney to take this action, did you not?

A. Whatever he did, he recommended it and I agreed to it.

Mr. Groner: I should like to introduce, may it please your Honor, the file history of this registration as Defendants' Exhibit 5.

The Court: It will be received.

(The file history referred to was received in evidence and marked Defendants' Exhibit 5.)

Mr. Groner: Further showing, may it please your Honor, [32] there has been only descriptive use.

Q. Now, Mr. Granat, you testified, I believe, that the trademark "Wed Lok" from the time of its adoption in 1934 by Granat Bros. had never been discontinued, isn't that your testimony?

A. The manufacture of rings—yes, we have used it continuously.

Q. Now, maybe you are being a little technical on this, Mr. Granat.

A. Technical?

Q. Has Granat Bros. or Granat Manufacturing

(Testimony of Joseph Granat.)

Company, and for the purpose of this case we will consider them as one, have they continuously marketed any product under the name "Wed Lok" continuously from 1934 to date? A. Yes, sir.

Q. Mr. Granat, didn't you some time after you started manufacture in 1934 discover that Strauss & Strauss—— A. That is correct.

Q. ——had the word—— A. Yes.

Q. ——and you discontinued the use of it——

A. Yes.

Q. ——and that discontinuance lasted for over a year?

A. For a certain amount of time; you are right on that, yes. When we found out that someone else owned it, we discontinued it.

Q. So you discontinued the use for over a year?

A. I don't know the length of time.

Q. About a year after you started using it?

A. Until we bought it.

Q. So your earlier statement is incorrect in that, isn't it?

A. It is incorrect—I don't know—he went back to——

Q. Isn't that a second hiatus in the use of "Wed Lok"?

A. You are using a pretty fancy word there. I don't know——

Q. All right. Isn't that a temporary discontinuance of the use?

A. No, sir, not since then.

(Testimony of Joseph Granat.)

Q. Didn't you discontinue to sell and advertise rings bearing the mark "Wed Lok" between 1940 and 1947?

Mr. Mellin: Just a moment——

A. We continuously used the word "Wed Lok"——

Mr. Mellin: Just a moment. I object to that as being a compound question, your Honor. They did discontinue the advertising during the war, but did not discontinue selling.

The Witness: We kept on selling——

Mr. Groner: All he has to do if he doesn't understand the question is say so. I ask the witness to give me an answer. It seems to me he can answer that question.

The Court: Overruled.

A. Yes, "Wed Lok" has been continuous. We have used it continuously except that one period when I found someone owned it, and we didn't use it until we bought it, the Wed Lok ring. [34] Since then we have used it continuously.

Q. (By Mr. Groner): Didn't you discontinue and entirely cease selling Wed Lok between 1940 and 1947?

A. I believe we did not push the sale of Wed Lok during that period.

Q. You didn't advertise it at all, did you, Mr. Granat?

A. I don't know. I don't think we did. We might or might not.

(Testimony of Joseph Granat.)

Mr. Groner: Mr. Mellin, was there any advertising in that period?

Mr. Mellin: There is no advertising, your Honor, between the start of the late World War and about the end of 1946, when they started—we admit there were no advertisements by Granat Bros. of Wed Lok rings during the war, there was no advertising during that period, but there was production and sale of Wed Lok rings. There is no contest there was any advertising.

The Witness: We might have advertised not in the Examiner. We advertised, I believe, in programs, but not in the Examiner.

Q. (By Mr. Groner): Will you produce any such advertisement, Mr. Granat?

A. I will try to locate them if I can.

Q. Were you not during the time when you were on deposition several months ago asked to do just that? A. Well, if I was—— [35]

Q. You haven't done it, have you?

A. I don't know whether I was asked or not. I can't remember. Have you got it down there and made a note of it, or something? I don't know.

Q. We asked the plaintiff to produce all advertising. A. The plaintiff?

Q. Yes, the plaintiff, and I don't know what is in that exhibit, but up to now nothing has been produced for us.

A. Well, I will look around. Maybe I can find you a few of those.

(Testimony of Joseph Granat.)

Q. For the period from 1940 to the spring of 1947.

A. We will look around.

Q. Well, as a matter of actual fact, you did not advertise before the war, did you, Mr. Granat?

Mr. Mellin: May I suggest you ask Mr. Granat to divide the retail business from the wholesale business? There is a difference.

Mr. Groner: Mr. Granat can do that. I don't know whether he wholesales or retails or does one or the other.

The Court: You may answer.

A. I don't know. I think we cut down on our Wed Lok advertising during the war, maybe before the war, but regarding the wholesaling end of it, I don't know just how much was done.

Q. (By Mr. Groner): But you have no advertisement to show between the period at least a year before the outbreak of the [36] war, or the outbreak so far as it concerned the United States, and the spring of 1947, isn't that correct?

A. Well, I don't know—no newspaper advertising, Examiner advertising.

Q. Now, what was it that impelled you to diminish, if not terminate, your manufacture during this period, Mr. Granat?

A. Well, we lost a lot of help in our factory, and we could sell most anything we made—we sold the easier rings to make. Anything we made were salable.

Q. And even beyond that wasn't there another

(Testimony of Joseph Granat.)

reason why Wed Lok went into obscurity?

A. I don't know. You may know it. I don't know.

Q. Is it a fact that you ceased or diminished manufacture primarily because that type of ring became unpopular? A. Not necessarily.

Q. I don't know what that word means, Mr. Granat.

A. I don't know what some of your words mean either.

Q. You can stop me——

A. I will stop you.

Q. ——and I will fill in and fix it so you will understand, and I would like you to do the same for me. Now, would you mind giving me some other answer than "Not necessarily"?

A. Well, we kept making rings right along, Wed Lok rings at certain times. Around during the war and maybe a little before the war we did cut down our production of everything, not only Wed Lok but of everything, and the ones we did make were the [37] rings easier to make.

Q. Is it a fact that in the pre-war period the Wed Lok type of ring was becoming less popular?

A. It was not.

Q. And it was for that reason that you either diminished or ceased manufacture?

A. That is not so, that is not so.

Q. That is not? A. No.

(Testimony of Joseph Granat.)

Q. Didn't you testify in this matter before my deposition, Mr. Granat?

A. Testify to what? What did I say?

Q. I am going to read it to you in just a minute. Well, didn't you testify in this matter by deposition, Mr. Granat, some months ago?

A. Yes.

Q. And didn't you testify this—you were asked, "Was there any advertising of Wed Lok rings in the years 1941 to 1946 inclusive?" and your answer appears to be this: —and I will ask you if that is correct. "I believe that in—" and then you paused and said, "Let's see, there was the tendency to the narrower type of ring and we had to change our tool dies and equipment to produce that style of narrower ring." Isn't that your testimony?

A. Well, what about it? [38]

Q. Isn't it the fact?

A. That didn't stop us making the other rings.

Q. What do you mean, the other rings?

A. Wed Lok rings.

Q. You were giving an explanation at this time, Mr. Granat, as to why there was no advertisement. Now, didn't you mean by that statement that Wed Lok rings had become unpopular?

A. No, sir.

Q. What did you mean?

A. The style of the ring——

Q. The style of the ring had become unpopular?

A. The style changed.

(Testimony of Joseph Granat.)

Q. You had to retool?

A. We had to make others.

Q. When you retooled did you retool for Wed Lok?

A. I don't know what you mean.

Q. Just what I said. Didn't you retool for other types of rings and not for Wed Lok? Isn't that the fact?

A. I still don't know what you are driving at.

Q. All you have to do is answer the question. Mr. Reporter, will you read it back to him?

Mr. Mellin: By "other types of rings," Mr. Groner, do you mean rings other than Wed Lok?

Mr. Groner: That is exactly what I mean.

Mr. Mellin: Well, the witness wants to know.

A. We make up other rings than Wed Lok. We made all our designs so as to change to the narrower construction, not only Wed Lok but the other rings, too. There was a style change. We had to stop making wide rings and make more fancy rings.

(Recess.)

Mr. Groner: For the record, may I note that the excerpt from Mr. Granat's testimony which I just read appears on page 114 of the San Francisco depositions.

Q. Now, Mr. Granat, bearing on the same general question, isn't it the fact that in the year 1939 Granat Bros. placed only four local newspaper advertisements of Wed Lok?

A. I don't know the number.

(Testimony of Joseph Granat.)

Q. Didn't you testify as to four?

A. I did.

Q. In the prior testimony?

A. I guess I did. They showed me the ads, and I testified—but I can't remember the number.

Mr. Groner: I may note, if it please your Honor, that I checked during the recess on Plaintiff's Exhibit F, and I find that there are but four advertisements there.

The Witness: Four Examiner advertisements, I believe, or whatever I said. There may have been others.

Q. (By Mr. Groner): You didn't produce them, any others?

A. No, I didn't. Maybe I should. Maybe I will get them. I don't know. [40]

Mr. Mellin: Just a moment, Mr. Groner. I beg your pardon. May we, in order that the Court won't be confused, make this statement: We are dividing them up. These are local retail ads, for the retail stores. That doesn't mean that there are no advertisements during that year nationally. That was handled by a different group. So what he is now testifying to, as I understand it, is purely local retail that he knows about. He doesn't know about national advertising.

Mr. Groner: May I ask your Honor's indulgence for just one moment?

(Pause.)

(Testimony of Joseph Granat.)

Q. (By Mr. Groner): Mr. Granat, you haven't produced any evidence in this case of any more than four local newspaper advertisements during the year 1939, have you?

A. Well, whatever they showed me at the time. At the time of the deposition they showed me four ads, and I said they were produced, that we produced them.

Q. Now, during the earlier depositions, Mr. Naylor said, "According to our count, Mr. Granat, there were four ads in 1939 relative to Wed Lok rings." A. In that particular——

Q. Excuse me just a moment.

A. Go ahead.

Q. And then Mr. Naylor said, "Were you advertising other things in that year?" and you asked, "What do you mean, other [41] things? Other diamond rings?" He said, "Yes." And your answer then is, "Yes." A. That's right.

Q. Now, in the year 1940, you testified earlier, did you not, that there were but eight advertisements? A. I believe so.

Mr. Groner: Well, I may note for the record, if it please the Court——

The Witness: The advertisements——

Mr. Groner: Excuse me just a moment, Mr. Granat.

The Witness: All right.

Mr. Groner: I should like to state, if it please the Court, that I checked the records during the

(Testimony of Joseph Granat.)

recess and find that there were probably eight different ads which appeared a total of eleven times, so I would like the record to show that those additional three times don't show.

The Witness: So you can't tell. It may have been more. You can't tell.

Q. (By Mr. Groner): Now, Mr. Granat, you testified in direct to some acquaintance, anyway, with Jewelers' Circular Keystone. You identified an ad from that; you are familiar with that magazine, aren't you?

A. Yes, sir.

Q. And you have been for many years, isn't that correct?

A. Many years, yes. [42]

Q. It is probably one of the two or three leading trade magazines?

A. That is right.

Q. Are you familiar with the book which the concern periodically issues, entitled "Trade Marks, Jewelry and Kindred Trades"?

A. Well, I know the term. I am not familiar with the trademarks or anything.

Q. You are familiar with that book, aren't you?

A. Yes.

Q. Now, isn't it the fact that in formulating that book they write to the various jewelers and ask them to supply Keystone with the trade-marks of that particular house?

A. That is correct.

Q. That is correct, isn't it?

A. I believe they do that. That is their affairs. I don't know.

Q. And they wrote Granat Bros., didn't they?

(Testimony of Joseph Granat.)

A. Probably. I don't know whether they did or not.

Q. Now, I call your attention to the fact that this book, page 50 of which, with the frontispiece, has heretofore been introduced in evidence as Defendants' Exhibit 110, on page 3 is the statement: "Trade-Marks of the Jewelry and Kindred Trades, Fifth Edition, 1943." Just about halfway through the period we have been speaking of. And then it goes on: Illustrations and reproductions of the marks, registered and unregistered, used by manufacturers, wholesalers and importers [43] of jewelry, sterling silverware, silver plate ware, watches, watch cases, watch attachments, precious, semi-precious and imitation stones, clocks, fountain pens, and so forth."

That aims to be a complete statement of all trade-marks used in the jewelry trade; is that correct, Mr. Granat? You are acquainted with that, are you not?

A. Well, I guess they aim to get certain information, yes. It is a private enterprise. It is nothing——

Q. With which, however, the various jewelers operate, isn't that correct?

A. They don't have to.

Q. No. Granat Bros. did, though, didn't it?

A. I don't know. Maybe it did and maybe it didn't.

Q. Well, I hand you now the book, and I point

(Testimony of Joseph Granat.)

to page 50 (handing to witness), and ask you if you see any statement there as to Granat Bros. trade-marks.

A. Some of them. This is the wholesale end of it, yes.

Q. Granat Bros. has no wholesale end, has it, Mr. Granat?

A. Well, they might have—this is 150 Post Street. This is the manufacturing, wholesale end of the thing.

Q. It is signed “Granat Bros.,” isn’t it?

A. They did. They signed it “Granat Bros.” I don’t know——

Q. Now, would you mind reading off the trade-marks of Granat Bros. which appear there?

A. “Standard Set, Buttercup, Coronet, Finger Bracelet, Hobby [44] Bracelet, Parisian Knot, and Rounded Square.”

Q. No Wed Lok there, is there, Mr. Granat?

A. What of it?

Q. Answer my question.

A. I don’t see Wed Lok there, no.

Q. It isn’t there, is it?

A. No. You don’t have to bark at me, though.

Q. Now, during this same period, your various customers were not able to get Wed Lok, were they, Mr. Granat?

A. There are two divisions. Wholesale and retail. That has to do with—I know my retail customers got Wed Loks, all the way through. I know

(Testimony of Joseph Granat.)

we manufactured them for the wholesale division. What they did with them, I don't know, at that time.

Q. Have you got any evidence of retail sales during this period? A. Lots of it.

Q. Will you produce them, please?

A. We can produce evidence.

Q. Now, with the wholesale customers, were they able to get any Wed Lok rings during this almost seven-year period? A. Between when?

Q. 1940 and the spring of 1947.

A. Certainly.

Q. You say they did?

A. They did, yes. [45]

Q. Did your customers, your customer Jackson of Salem, Oregon, get any during that period?

A. How do I know?

Q. I want an answer, Mr. Granat.

A. I don't know.

Q. He testified that he was unable to get them. Do you think he was incorrect?

A. I don't know anything about the wholesale division.

Q. Do you think he was incorrect?

A. I think he was incorrect.

Q. You are a partner in the wholesale division, aren't you? A. I am now.

Q. And you were in 1940 to 1947, weren't you?

A. We have been partners—no, not 1940 to 1947.

Q. Did you have nothing to do with the wholesale division during that period?

(Testimony of Joseph Granat.)

A. Just as suppliers of merchandise of our—I don't know when. I would have to get some information. I don't know when this—Let's see if I have it here now (consulting notebook). The partnership—I don't know when we formed that partnership. As far as the wholesale division was concerned—— [46]

Q. Wasn't there another partnership in which you were a member which preceded the present one? A. Not that I know of.

Q. Haven't you been a member of the partnership of Granat Manufacturing Co. since before 1940? A. A partner?

Q. Yes.

A. I wasn't a partner in the Granat—in the L. A. Giaccobi setup. I don't know what you are talking about now.

Q. Haven't you been a member in Granat Manufacturing Co. since early in 1940? A. No.

Q. When did you first become a partner in that?

A. I haven't got the date. I can get it for you.

Mr. Mellin: As a matter of fact, that is a corporation.

Q. (By Mr. Groner: Well, whether it would be a corporation or a partnership, you were either an officer of the corporation—— A. In 1940?

Q. ——or a member of a partnership since before 1940 continuously until the spring of 1947; isn't that correct? A. No.

(Testimony of Joseph Granat.)

Q. You had nothing to do with Granat Manufacturing Co. during that period?

Mr. Mellin: What period?

A. Not up to a few years ago, a couple of years ago. [47]

Q. (By Mr. Groner): Would you furnish us with the exact information as to that, Mr. Granat?

A. I will, yes.

Q. Now are you acquainted with your customer, Harley G. Jackson? A. No, sir.

Q. Are you acquainted with the fact that that witness, a witness for the plaintiff, by the way, testified as follows in his deposition where he was asked: "Were you able to procure from him—" the Granat salesman at that time, 1947—"Wed Lok ensembles"? And he answered: "I understood at that time I couldn't get them". And the next question: "In 1947"? And his answer: "That's right. But as soon as they were available, I was going to have them". And the next question: "As far as you know, they were first available to you in January of 1948"? And he answered that: "That's right, sir".

Do you disagree with the correctness of that witness' statement?

Mr. Mellin: Well, if your Honor please—

A. I don't know anything about that wholesale business.

Mr. Mellin: If your Honor please, he is talking wholesale. The witness says he knows nothing about

(Testimony of Joseph Granat.)

it except as to the retail, and then counsel continues to argue it, and he doesn't even know the witness.

The Witness: I don't know the witness. [48]

Q. (By Mr. Groner): Now just to clear away the difficulty possibly occasioned by your statement that you had nothing to do with it——

A. Well, I mean it is not my responsibility. I am interested, but it isn't my responsibility.

Q. Well, that is a little modification of what you said earlier isn't it, Mr. Granat?

A. I don't know whether it is or not.

Q. Now look, I am not talking to you about how you and the family——

A. You are talking to me about the same person I don't know anything about, Mr. Jackson or whoever he is.

Q. Now, wait a moment. I am not concerned with how you and the other members of your various friends divide up the business. I am asking you simply and solely the question, if you were not either an officer, if the unit was a corporation, or a partner if it was a partnership, of Granat Manufacturing Co. or of Giaccobi, since before 1940 up to the spring of 1947.

A. I have been, but not since 1940.

Q. What do you mean?

A. I wasn't an officer then.

Q. You were a partner, if you weren't an officer, weren't you?

A. No.

Q. You were just a silent partner?

(Testimony of Joseph Granat.)

A. In 1940? [49]

Q. Yes. A. 1940—no, I wasn't.

Q. Would you furnish us after the lunch recess with an exact tabulation of your relationships to the plaintiff, to Granat Manufacturing Co., and to Giaccobi? A. I would be glad to.

Q. From before 1940 up to date?

A. Yes, sir, I would be glad to.

Mr. Groner: Now the question that I am going to ask, may it please your Honor, are all predicated on the showing that this witness was either a partner or an officer during this period.

The Witness: I wasn't, all during that period. I can tell you that.

Mr. Groner: Do you know Leonard B. Goldblatt, who testified on behalf of the plaintiff in this matter and who is a resident of Salem, Oregon?

A. I do not know the gentleman, no, sir.

Q. Well, now, I direct you to page 26 and 27 of Mr. Goldblatt's testimony. He was asked: "Did you have any knowledge of it—" —Wed Lok—" —during the war years"? His answer was, "No, sir". The next question: "Was it available to you during the war years"? A. "No, sir".

Is that incorrect?

A. I don't know whether it is correct or not. I don't know Mr. [50] Goldblatt or whatever his name is. I don't know anything about it.

(Testimony of Joseph Granat.)

Q. You do know Mr. Giaccobi, don't you, of Portland? A. I know Giaccobi, yes.

Q. And you know that he has testified on behalf of the plaintiff in this matter? A. He has.

Q. Now Mr. Giaccobi testified, at page 30: "Well, during the war they—" —Granat—" —were not making all those styles. They were just making a few, a certain few rings. They eliminated making a lot of them." Is he incorrect in that?

A. Well, I don't know. When he says "a lot" of them, I don't know. We eliminated some, but I don't what Giacobbi means, "a lot of rings".

Q. Among those they eliminated was Wed Lok, wasn't it, Mr. Granat? A. Did he say so?

Q. He said he couldn't get them.

A. He couldn't get them—there was a lot of other things you couldn't get during the war.

Q. No, I should perhaps read you further from Mr. Giaccobi's testimony. On page 43, Mr. Granat, there appears this question: "Now I think you mentioned that during the war years Granat Bros. were not making Wed Loks. Is that your testimony"? And the answer: "Yes. Pardon me. As far as I know; at least they [51] might have been making them, but we were unable to purchase any from them. At least I was not able to purchase any from them. Whether they were making them or not I can't tell." And then the next question: "Did you send any orders in?" The answer: "There was no orders. I used to go down and buy what I could.

(Testimony of Joseph Granat.)

They were not accepting orders". And then the question: "In any event, you were not able to place an order and receive the goods?" And the answer: "I wasn't able to order anything from them. I used to go down and get what I could from them, or they sent me whatever they had, whether I had ordered it or not".

Do you think he was inaccurate in his statement there?

A. Well, I didn't do it—I couldn't tell you. Mr. Wineroth could tell you more about that. I couldn't tell you. Yes, I don't think he could get what he wanted; some of his statements are correct. Others are not. I don't know.

Q. And he couldn't get Wed Loks, could he?

A. I don't think he could get much of anything.

Q. Just restrict your answer to my question, will you please?

A. I don't know whether he could or whether he couldn't. All I could tell you is, we were making them right along. I am interested mainly in the manufacturing end of the business, and the retailing.

Q. Now you know, Mr. Granat, Mr. Philip Klieger, who has appeared as a witness for Granat in this case? You know him, don't you? [52]

A. I don't know.

Q. You don't know? A. No, sir.

Q. You don't know him?

A. I don't know him.

(Testimony of Joseph Granat.)

Q. And you don't know that he is a customer of Granat?

A. I don't know he is a customer of Granat.

Q. Well, now I will read from his testimony and see if it isn't correct. This is on page 32: "Now you mention that there was no purchases in the war time." And the answer: "No, there were purchases in the war time but I don't know of any Wed Loks."

Is that inaccurate, Mr. Granat?

Mr. Mellin: Your Honor, how can this witness tell what this other witness could remember? It is ridiculous.

The Witness: Jesus, I don't know.

The Court: Yes. Sustained.

Mr. Groner: May I call your Honor's attention, or the attention of this record, to the various other witnesses produced by this plaintiff who testified time after time that they couldn't get Wed Lok—

The Court: How could this man tell that somebody else's memory didn't call to his mind that these rings were sold or were able to be had?

Mr. Groner: May it please your Honor, I am not asking that.

The Court: That was what your question was.

Mr. Groner: I am only asking if he thinks the witness was incorrect.

Mr. Mellin: And saying that he couldn't remember.

The Court: His memory was faulty? Sustained.

Q. (By Mr. Groner): You testified earlier,

(Testimony of Joseph Granat.)

didn't you, Mr. Granat, that you were in charge of plaintiff company and that you had charge of litigation instituted by or participated in by that company, isn't that the fact?

A. I don't know what you are asking me about; would you make that plainer so I can understand what you are talking about?

Q. In your earlier testimony, and I refer to page 55 of the San Francisco depositions, you were asked: "You personally instructed counsel what to do or what you wanted done, is that correct"? And you answered, "Yes."

A. I instructed the counsel?

Q. Yes.

A. What do you mean by that?

Q. With respect to "participating in Granat Bros.' policy with respect to actions or lawsuits," like the instant one. Is that your earlier statement? A. Well——

Q. Is that accurate?

A. I still don't know what you mean. You mean that I told them to bring suit? Is that what you mean?

Q. Well, that is what it boils down to; and take the various [54] preliminary steps to bringing suit.

A. Well, I don't know much about the preliminaries. I told my attorney to bring suit, yes.

Q. And then the next question at that time: "Has that been your practice at some time?" Answer: "Practice of what?"

(Testimony of Joseph Granat.)

Q. And you answered: "Your practice with respect to instructing counsel and directing legal policy." And you answered, "I confer with some of my associates, but I am the deciding factor."

That is the fact, is it not?

A. Well, yes, I could say——

Q. When did you first notice the use of the mark "Feature Lock"?

A. In 1948, I believe.

Q. Can you place a date?

A. Not exactly, not an exact date. I believe it was in the month of May, something like that.

Q. After you noticed this first use, you caused certain notes to be sent to users of this mark, did you not?

A. Yes.

Mr. Groner: May it please your Honor, I should like to introduce at this time, as a matter of convenience, a copy of Defendant's registration mark, No. 506514, which has only been issued in the last month, but which was applied for some time earlier. And I should like particularly to call your Honor's attention to the fact that the application, or the registration, states, "The word 'lock' is disclaimed apart from the mark as shown on the drawing." Simply indicative of the fact that we use the word "lock" only as "lock" would normally be used in its descriptive sense. This, I believe, is Defendant's Exhibit——

* * *

The Clerk: No. 6.

(Testimony of Joseph Granat.)

(Registration No. 506514, referred to above, was thereupon received in evidence and marked Defendant's Exhibit No. 6.)

Q. (By Mr. Groner): You did testify before I interrupted you that you had authorized the sending of notices?

A. Yes, I get advice from my counsel, and we decide to go in and do these things. But I mean, you can say that I am the deciding factor.

Q. You sent almost simultaneously, or caused your counsel to send, a considerable number of other notices of asserted infringement and asserted unfair competition because of others' use of the word "lock," isn't that correct?

A. That is so. I don't know the number, yes.

Q. Now you testified earlier, as I recall, that there were about 24 different notices which had gone to different users of the word "lock," isn't that correct?

A. I don't know the number.

* * *

Mr. Groner: Now may I parenthetically remark to your Honor at this time that we have heretofore gathered eight different examples of these notifications or notices of plaintiff or plaintiff's counsel to descriptive users of the word "lock." There are a considerable additional number. I believe there are about sixteen, according to the testimony of Mr. Granat earlier [57]

The Witness: Did I say that number?

Q. (By Mr. Groner): You said about 24?

(Testimony of Joseph Granat.)

A. That was using the name. But not that we sent letters out to or anything.

Q. I think you said you sent them to about 24.

A. Sent letters?

Mr. Groner: If you will wait just a moment, I will find your reference. Excuse me, please.

Q. Refer now to page 71 of your earlier evidence, Mr. Granat. You were asked on page 70—I have to go back to make it understandable: “Well, are we to understand from what you say, Mr. Granat, that you simply issued blanket instructions—that is, instructions to your counsel?” The answer is: “I don’t—we started out and we sent a couple of these, a few of these letters which you have there.” The question: “You are indicating Defendant’s Exhibit 13A, 12——” And you interrupted and said, “Yes.” And then the question continues: “——11, 10——” —referring to exhibit numbers, if it please your Honor— “——those are the ones you are pointing to?” And the answer, Mr. Granat, which you gave: “Yes, and sometimes a new infringement, a name will come along. I might call his——” —counsel’s— “——attention to it. He has about 24, maybe more than that, names of locks.” The question: “Well, have notices of infringement been sent to all of them?” And the answer: “I don’t know.” And then you continue.

A. That’s right, I didn’t know; I don’t know how many letters were in them.

* * *

(Testimony of Joseph Granat.)

Mr. Mellin: We did notify, for the record, your Honor—may I have those? (Documents produced.)

Mr. Mellin: Now, as I say, as our case shows, this defendant commenced using Feature-Lok in May. They were sued in August. In between that time I have in front of me the Corpus Christi Caller of Thursday, July 15, 1948 advertising wedding ring ensembles under the name Feature-Lok, “L-o-k,” not “L-o-c-k.” They were notified.

I have also before me a tear sheet of the California North Hollywood San Fernando Valley Times dated—I don’t remember the date of the paper—September 2, 1948, Cupid Lock, in script—and by the way, these are all in script like Wed Lok has always been used, your Honor, and I have before me page 14 of the Independent of Long Beach, Dovetail Lock also in script. They were notified.

Mr. Naylor: What is the date of that?

Mr. Mellin: Saturday, August 6, 1948. I have before me the Salisbury Times of Salisbury, Maryland, July 29, 1948, in script, “Rhapsody Lock.” They were notified.

I have before me, and I don’t have the date—it is an Albuquerque, New Mexico paper in which is advertised Love-Lock, not in script, but in which they even copy the art work of the Granat ads. They were notified.

I have in front of me the Detroit News of July 9, 1948, the word “Treasure-Lok,” for diamond ring ensembles. They were notified.

(Testimony of Joseph Granat.)

I have before me Life Lok in script, Manne & Sons in New [61] York. They were notified.

Mr. Naylor: May I have a date on that?

Mr. Mellin: I beg your pardon. That is the News Magazine of the jewelry industry, and I have a date on here somewhere—July 1, 1948. I beg your pardon.

I have in front of me also the Daily News—I don't see the town—Stamford, Connecticut, September 17, 1948, Duo-Lock—D-u-o Lock in script.

I have in front of me the Portland, Oregon Journal for Wednesday, September 15, 1948, Lucky-Lock in script for wedding ring ensembles.

I have before me the Adrian Daily Telegram of Michigan, August 28, 1948, Eterna Lock in script for wedding ring ensembles.

And I have before me the Beaver Valley Times of Beaver and Rochester, Pennsylvania, Bridalok, l-o-k, in script, for the same thing.

I have before me in script on the Los Angeles Daily News of Wednesday, July 1, 1948 Heart Lock in script for wedding ring ensembles.

And I have before me the Elko Daily Free Press, the word "Wed Lok," L-o-k, in two words, and underneath it says, "Diamond rings with the exclusive feature-lock in script, using this defendant's trade-mark and undoubtedly this defendant's lock.

I have another, the Humboldt Standard, Monday, July 12, 1948, Wed Lok, L-o-k. [62]

And I would like to offer that group of papers

(Testimony of Joseph Granat.)

in evidence, your Honor, and I believe that those were notified of infringement of the trade-mark, and we will show as we proceed that most of these are users of this ring setting in which they set their own diamonds, and that it was the lock, which is trading on our reputation.

Mr. Groner: Do I understand notices did go to all those?

Mr. Mellin: I am certain—I will admit they all went to them—I am almost certain they all went to each one. That is how I made the collection.

* * *

Q. (By Mr. Groner): Referring, Mr. Granat, to the Jewelry Circular Keystone for May 1948, page 69, which is Plaintiff's Exhibit I, did you observe that advertisement?

A. I observed it.

Q. Did you observe the prominent name, which you see, of the product there referred to?

A. The name "Feature-Lok"?

Q. No, the name of the person or firm who issued it. A. The address is there, yes.

Q. And that advertisement does show in large letters the name "Feature Ring Co., Inc., 128 West 46th Street, New York 19, New York," does it not? A. Yes.

Q. And you also caused to be sent a circular letter addressed to "our customers," did you not?

A. To whose customers?

(Testimony of Joseph Granat.)

Q. Well, assumedly Granat Manufacturing Company customers. A. That is right. [65]

Q. I refer you to Defendants' Exhibit 15.

A. Yes. What about it? What is your question?

Mr. Groner: Will you read the question.

(Question read.)

Mr. Mellin: Let the record show "our" meant Granat Bros.

The Court: With that explanation you may answer it.

A. Yes, sir.

Q. (By Mr. Groner): And that went to about a thousand? A. I don't know the number.

Q. Do you know whether they were active customers of Granat Bros. or Granat Manufacturing Company? A. To the active customers.

Q. Only to the active customers?

A. Supposed to have been only to the active customers.

Q. Were they exclusive customers of Granat?

A. I don't know whether they were exclusive. They were our customers.

Q. Do you have a list of a thousand customers, Mr. Granat? A. I don't know.

Mr. Groner: That is all, your Honor.

Redirect Examination

By Mr. Mellin:

Q. Mr. Granat, just one or two questions. With reference to rings in general, leaving out Wed Lok,

(Testimony of Joseph Granat.)

you have a number of other trade-marks, do you, that designate [66] engagement rings, wedding rings? A. We have others, yes.

Q. Other than Wed Lok? A. Yes.

Q. You have quite a few?

A. We have several of them.

Q. Is there any value to Granat Bros., as far as you understand, of advertising your trade-mark in the book he showed you?

A. Oh, that thing—we get sort of—we get a form letter that doesn't mean a thing to me. That book has no value to me.

Q. And what does the word—Mr. Groner was asking you about whether the trade-mark “Wed Lok” was used in a descriptive sense—what does the word “Wed Lok” actually—what was it intended to convey?

A. Well, in our own business we would say—you have the Orange Blossom rings, which meant the Trout Manufacturing Company, or you have Art Carve, which means J. R. Woods. When it is Granat it is the same principle, that identifies us; when they say “Wed Lok” it means Granat.

(Thereupon a recess was taken until 2:00 p.m. this date.)

Afternoon Session—2:00 p.m.

The Court: Is there any further examination of this witness?

(Testimony of Joseph Granat.)

Mr. Mellin: Just to clear up the matters counsel requested, your Honor.

May the record show, your Honor, that during the noon hour we determined that the L. A. Giaccobi Company was a partnership consisting of two Giaccobis and Joseph Wineroth, from prior to 1934 to December 1941, or rather, up until 1944. And at that time the partnership was succeeded by a second partnership of Mr. Leo Granat, Mr. Joseph Granat, and Mr. Joseph Wineroth, and Mr. L. A. Giaccobi; that in June of 1946 a corporation, the L. A. Giaccobi Company, operating under the fictitious name of Granat Manufacturing, succeeded to the rights of the three, the two Granats and Mr. Joseph Wineroth; that they are equal owners of the stock in that company and that the Granat Bros., the corporation, the stock is owned equally by Joseph Granat and Leo Granat.

Is that satisfactory, counsel?

Mr. Groner: Entirely.

Mr. Mellin: Now, the witness was asked during the lunch hour to produce any other ads that used "Wed Lok," retail ads; and I confined it to retail ads because, I may state for the record that Mr. Joseph Granat doesn't have anything [68] to do with the running of the business of the wholesale end. And these ads were located by their advertising department. (Handing to Mr. Groner.)

This covers the years '41, '42 and '43.

I produce an ad, "Wed Lok," which appeared in

(Testimony of Joseph Granat.)

the San Francisco Examiner of June 1, 1941, and I offer that in evidence as plaintiff's next in order.

Mr. Naylor: May we reserve the right to inspect? Because these were not produced on the depositions, and we have not seen them before.

Mr. Mellin: No objection.

The Court: Certainly, you have the right to inspect them before they are offered.

Mr. Naylor: I thought it might save time if we did it during one of the recesses, your Honor.

The Clerk: Plaintiff's Q.

(Ad appearing in Examiner June 1, 1941 was received in evidence and marked Plaintiff's Exhibit Q.)

Mr. Mellin: And a second one, an ad in the San Francisco Examiner for Sunday, November 23, 1941, Wed Lok.

The Clerk: R.

(Ad appearing in Examiner November 23, 1941, was received in evidence and marked Plaintiff's Exhibit R.)

Mr. Mellin: And a third one. And may I ask the clerk to nail this together in some [69] fashion?

The Clerk: Certainly.

M. Mellin: A third one is the San Francisco Examiner ad for Sunday, September 28, 1941, showing Wed Lok in the lower left-hand corner.

The Clerk: S.

(Testimony of Joseph Granat.)

(The ad referred to was received in evidence and marked Plaintiff's Exhibit S.)

Mr. Mellin: And in the Sunday Examiner of April 19, 1942, a Wed Lok ad; I offer that as next in order.

The Clerk: T.

(The ad referred to was received in evidence and marked Plaintiff's Exhibit T.)

Mr. Mellin: And a Wed Lok ad by Granat in the San Francisco Call Bulletin, May 11, 1942, Plaintiff's next in order.

The Clerk: U.

(The ad referred to was received in evidence and marked Plaintiff's Exhibit U.)

Mr. Mellin: And San Francisco Examiner, Sunday, April 25, 1943, Wed Lok.

The Clerk: V.

(The ad referred to was received in evidence and marked Plaintiff's Exhibit V.)

Mr. Mellin: And a Wed Lok ad that appeared in the Oakland Tribune for Sunday, May 9, 1942.

The Clerk: W. [70]

(The ad referred to was received in evidence and marked Plaintiff's Exhibit W.)

Mr Mellin: And a part of a tear sheet that appeared in the Oakland Tribune, October 10, 1943, Wed Lok.

(Testimony of Joseph Granat.)

The Clerk: X.

(The tear sheet referred to was received in evidence and marked Plaintiff's Exhibit X.)

Recross-Examination

By Mr. Groner:

Q. Just one question, Mr. Granat. During the period prior to 1944, when you became a partner in the Giaccobi Company, did you allow that company, or as it was sometimes known, the Granat Manufacturing Company, to use your trade-mark as they wanted to?

A. Yes, they used it as they wanted to.

Q. There was no veto power exercised or no control?

A. No.

Mr. Groner: That is all.

Further Redirect Examination

By Mr. Mellin:

Q. But did you allow them to use them on any goods except Granat wedding ring ensembles?

A. No; they were our sole distributors; it was all Granat merchandise.

Mr. Mellin: That is all.

May I at this time ask that we—we have just received a deposition taken in Los Angeles, your Honor, of Benjamin B. [71] Shapiro, and I would like to have it filed at this time, if that is agreeable with counsel.

Mr. Groner: That is agreeable.

Mr. Mellin: Mr. Leo Granat.

LEO GRANAT

called on behalf of the plaintiff; sworn.

* * *

Direct Examination

By Mr. Mellin:

Q. Your name, age, and residence, Mr. Granat?

A. Leo Granat; I am 61; 2447 Cabrillo Street.

Q. And you are an owner of half of the stock of the Granat Bros., the plaintiff here?

A. That is correct.

Q. And you are a third partner in the Giaccobi Company, known as the Granat Manufacturing Company?

A. Correct.

Q. And you are the Leo Granat who is the partner of Joseph Granat in manufacturing jewelry in San Francisco since 1906?

A. Yes, sir. [72]

Q. What have been your duties in connection with Granat Bros. from 1934 to date, Mr. Granat?

A. In the manufacture and the construction of any jewelry that is manufactured by us.

Q. Are you in charge of the factory?

A. That is right.

Q. How many jewelers do you have employed now?

A. Around about 100 to 145, something like that.

Q. How many jewelers did you have employed prior to, say, January of 1942, prior to the war?

A. It would run around 160.

(Testimony of Leo Granat.)

Q. And how many jewelers did you have during the late war employed?

A. Oh, very few. I would judge probably around 25 or 30.

Q. Now, I hand you exhibit Plaintiff's A and ask you if you can tell us, please, when those rings were—or this ring was manufactured, or commenced to be manufactured—not the identical set, but that type (handing to witness).

A. Oh, this type and style of ring is one of the first ones.

Q. And when was that, please?

A. In the neighborhood of '33, '34, something like that.

Q. And would you know whether or not such sets were identified in any way as "Wed Lok" by marking in any fashion?

A. Yes, sir, they were stamped inside.

Q. That ring is so stamped that you have in your hand? [73]

A. Yes, sir.

Q. And do you still manufacture those rings today?

A. Yes.

Q. And I hand you Plaintiff's Exhibit B and ask you when, if those rings—or rather, if those rings are manufactured by Granat.

A. Yes, sir.

Q. You have manufactured that type?

A. I did; we did manufacture them.

Q. And when, please?

(Testimony of Leo Granat.)

A. This later, fairly late.

Mr. Groner: What, Mr. Granat?

The Witness: What year?

Mr. Groner: No, I couldn't hear what you said.

The Witness: Oh, not in 1933 or '34—not this one.

Q. (By Mr. Mellin): Not this one?

A. Not this particular ring.

Q. When was that design manufactured?

A. Around 1940, something like that.

Q. And I hand you Plaintiff's Exhibit C (handing to witness), and I ask you if—by the way, with reference to Exhibit B, do you still manufacture that type of ring? A. This one, yes, sir.

Q. And would you examine Plaintiff's Exhibit C, please, and tell us if rings of that type are manufactured by Granat? [74] A. Yes, sir.

Q. And during what period, please?

A. I should judge this was made maybe around '40 or something.

Q. Now, of the two rings, Exhibits B and C, were those rings identified in any fashion by marking them with a trade-mark? A. Yes.

Q. Stamped?

A. And a patent stamp in the ring.

Q. I hand you Plaintiff's Exhibit D, and I ask you about that ring, when you commenced manu-

(Testimony of Leo Granat.)

facturing rings of that type, and were they marked with "Wed Lok" or not (handing to witness)?

A. Yes. These are made around '42, '43.

Q. Is that known as the "Nanette" series?

A. Yes, sir.

Q. And during what period did you manufacture that, say, subsequent to '41? A. Before '41?

Q. Subsequent—after '41. A. After '41?

Q. Yes. A. After '41—yes, regularly.

Q. Were those made all during the war or not?

A. Yes, sir.

Q. And were they marked "Wed Lok" or not?

A. Yes, sir. [75]

Q. Stamped inside of them? A. Yes, sir.

Q. And I hand you Plaintiff's Exhibit E and ask you if that is a type of ring manufactured by Granat Bros.

A. Yes, sir.

Q. And when did the manufacture of that type commence?

A. This here was introduced right after, around the war, after; but we began working on this before the war.

Q. And that came out commercially right after the war? A. Yes, as soon as possible.

Q. Is that what you call the "snap-on" type?

A. That is correct.

Q. That has a mechanical lock or latch?

A. That is correct.

The Court: You say right after the war; you mean after it started, or after the finish of the war?

(Testimony of Leo Granat.)

The Witness: After it finished.

Q. (By Mr. Mellin): Now, do all of the others have a mechanical lock or latch of some type?

A. One of them has.

Q. Which one is that? Would you identify it for me, please? A. Here it is right here.

Q. And will you put it back and give me the exhibit number? A. C.

Q. Exhibit C. Thank you, Mr. Granat. [76]

Now, if you know, do you know what production of Wed Lok rings was prior to December of 1941 per day, approximately?

A. Well, I can't exactly tell you, but our production was around 175, 200 rings a day.

Q. And after the war was over, say, in 1947, what was the production——

A. These—not so much, but we did quite a lot of Wed Loks. About 50 per cent, I should judge; something like that amount.

Q. After the war was over? A. Yes, sir.

Q. And would you say whether, at any time, the Granat Bros. Manufacturing, between 1934 and to the present time, has ceased to manufacture the rings marked "Wed Lok"? A. No, sir.

Q. They were manufactured all during the war?

A. Yes, sir.

Q. Now, would you tell us, please, and make it as precise as you can, when the production of Granat merchandise, including Wed Loks, was cur-

(Testimony of Leo Granat.)

tailed because of the war? Can you give us that date?

A. I could not; but there was restrictions on metals and everything else, and part of our men, they went off and they went to war work, and everything else like that. I really can't tell you. But when the restrictions came on, we were hit pretty hard. [77]

Q. Can you tell us when that was with reference to the declaration of war on December 8, 1941?

A. It must have been about six or eight months.

Q. Afterwards or before? A. Yes.

Q. Afterwards? A. Afterwards.

Mr. Mellin: That is all. Oh, one more question, if I may.

Q. What was the reason that there was only 25 jewelers in the Granat Manufacturing Company during the war?

A. Well, a lot of them went into war work, and we found out about certain propositions that the Government had, and a lot of them went to war work, where they were really necessary, and others went to war, and most of our help were in that age category, and we lost quite a bit.

Q. And they were all skilled jewelers, were they not? A. Oh, yes.

Q. Could you replace them? A. No.

(Testimony of Leo Granat.)

Cross-Examination

By Mr. Naylor:

Q. Mr. Granat, will you kindly examine Plaintiff's Exhibits A to E inclusive (handing to witness), taking A first, and state whether or not the rings contained within that set are interlocked in any way? [78]

A. Well, the only thing that they do is, they form kind of a contour that has a shape to it. That is as far as——

Q. Now, that is because of the peculiarity of the shape of the wedding ring, with a matching shape on the engagement ring, isn't it?

A. That is correct.

Q. Will you please examine Plaintiff's Exhibit B and state whether or not there is an interlocking mechanism of any kind (indicating).

A. No, sir, it is the same thing.

Q. Same as A? A. That is correct.

Q. Those are the contoured shapes, aren't they?

A. That is correct.

Q. And they interlock by virtue of the matching shapes? A. They go in——

Q. Just a moment.

A. They can't shift from one side to the other. There is no interlocking on them.

Q. But they are locked against rotation, aren't they?

A. Well, yes, on movement of your finger, why, that is the only thing that can stop it, probably.

(Testimony of Leo Granat.)

Q. They are locked against a rotating shift, aren't they?

A. That's right. They are not locked; they are just interwoven, or whatever you might call it. [79]

Q. Now will you please examine Plaintiff's C and state whether or not that contains any sort of a locking mechanism (handing to witness).

A. Yes, sir.

Q. What is the nature of the lock there?

A. Well, that goes up and down (indicating).

Q. Will you describe it to the Court?

A. Sure. There is a core in this, and a peg on this, and it just slides up and like this (indicating). It takes the place.

The Court: Would you repeat your answer for the reporter, please?

The Witness: If you wish, I will put it together.

The Court: Please do. Go right through the same operation.

Q. (By Mr. Naylor): And describe it. Then the reporter will get it.

A. Well, in the movement, there is a peg and a hole, and the peg fits, the movement up and down, see, the movement up (indicating), and then it looses, and then you pull it down and it tightens itself (indicating). [80]

Q. As in the case of a dovetail joint?

A. On the same principle; it doesn't dovetail, it goes straight up and down. There is no dovetail of this at all.

(Testimony of Leo Granat.)

Q. And that was the locking mechanism that prevented rotative shift, as between the wedding and engagement rings in that particular set, is that correct? A. That is right, yes.

Q. Now will you please examine Plaintiff's D and state whether or not you find a locking mechanism within that ensemble? A. No.

Q. What is the nature of the set?

A. This is the same as the others.

Q. The same as A and B?

A. That is correct.

Q. And there again, the means employed to prevent rotative shift as between the engagement ring and the wedding ring is a peculiarity of the matching shapes, is that correct?

A. That is correct. This ring here, so they won't —(indicating).

Q. They won't turn in relation to each other?

A. There is no mechanical device to it.

Q. But they do interlock?

A. Yes, in a sense.

Q. Now, will you examine Plaintiff's E and state whether that ensemble contains a locking mechanism? [81] A. Yes, sir.

Q. What is the nature of that locked mechanism?

A. It is—there is a snap on either side of the rings, and one of them fits into the other one with a snap motion or movement, or whatever you might call it (indicating).

(Testimony of Leo Granat.)

Q. It is a miniature of the Carr fastener, isn't it?

A. I don't know. It is similar as a glove, a snap.

Q. It is like the fastener on this key container, isn't it? A. That is correct.

Q. In other words—— A. Yes, sir.

Q. In other words, there is a pin that enters a spring clasp, isn't that it?

A. Yes, it is just like this (indicating).

Q. And so the fastener on E is a miniature snap, a miniature of that?

A. E? Which one is that?

Q. The one you just looked at. A. No, sir.

Q. Have you got the ring?

A. I have it here.

Q. That is a miniature snap fastener, isn't it?

A. Yes, sir.

Q. Is that right?

A. Well, I don't know what you would call it, but they fasten. [82]

Q. And there is a spring snap to it?

A. Yes, sir (indicating). You hear that?

Q. Now they are locked together?

A. That is correct.

Q. And you are speaking now of Plaintiff's G?

A. That's right.

Q. Now will you state whether or not it was practical in the production end of Granat Bros. for you to stamp these various rings, A to E, with the trade-mark "Wed Lok"?

(Testimony of Leo Granat.)

A. That is correct.

Q. How was that done? A. By machine.

Q. Did you have a die for it?

A. Yes, that is right.

Q. Now was it your practice to also stamp patent numbers within the rings? A. Yes, sir.

Q. Will you please examine Plaintiff's E and state whether or not that particular setting contains a patent number and if it does, will you please read it into the record?

A. I can't; I would have to have a loupe.

Q. You don't have a glass? A. No, sir.

Mr. Naylor: May we interrupt just a moment, your Honor? I think we can get a glass. [83]

(Mr. Naylor handed a magnifying glass to the witness.)

A. (Continuing) That is 1-9—I don't know—2-8-6-4. There is one number that is pretty—I guess I could guess at it, but I don't want to guess at it. Can I see that other one a second?

Q. Yes, indeed. (Handing to witness.)

A. Now this one here was "Wed Lok" in there, and it has the patent number in there (indicating).

Q. You are referring to the engagement ring portion of E as having the trade-mark?

A. That is correct.

Q. And the wedding ring portion as having the patent number? A. That is correct.

Mr. Naylor: I think that is all.

JOSEPH NORMAN WINEROTH

called on behalf of the plaintiff, sworn. [84]

* * *

Direct Examination

By Mr. Mellin:

Q. What is your full name, Mr. Wineroth?

A. Joseph Norman Wineroth.

Q. What is your age and residence?

A. Age 54, residence 2121 Broadway, San Francisco.

Q. What is your occupation?

A. President of the Granat Manufacturing Co.

Q. Is that the L. A. Giaccobi Co. we have been speaking of? A. That is correct, sir.

Q. And how long have you been associated or a partner or an official, or interested in the various partnerships and corporations, the L. A. Giaccobi which is known as Granat Manufacturing?

A. About 1925.

Q. And what was your business before that time?

A. Well, I was employed by the same company.

Q. And what is the respective business of the Granat Manufacturing Co.?

A. Well, they distribute the products of the Granat factory.

Q. And what products are those?

A. Well, the "Wed Lok" ensembles, and other ensembles.

Q. Do you handle goods of others in addition to the Granat Bros.' goods?

(Testimony of Joseph Norman Wineroth.)

A. We handle no other merchandise of any description other than loose diamonds that we import.

Q. As far as manufactured goods are concerned, your business is [85] confined entirely to the sale of diamond, wedding and engagement rings?

A. That is correct, sir.

Q. And for how long has that been so? With that company?

A. We started about 1915 or 1916, selling Granat products.

Q. And have been exclusively representing them since that time?

A. We have been exclusively representing them; but there was a period there when we first started that we carried a few other products. But as we went along, I would say after a period of about five or six years, we discontinued the sale of all other products and concentrated our efforts on Granat Factory's products.

Q. And those were always diamond rings?

A. That is correct, sir.

Q. Now during the period of, from, say, 1934 to date, what has been your responsibilities and duties with that company?

A. Well, I watched the overall picture of our business as president; that is my job.

Q. Do you closely follow the details of sales?

A. I most certainly do.

Q. Advertising? A. I do.

Q. And the merchandise that is sold?

(Testimony of Joseph Norman Wineroth.)

A. I try to cover every phase of our business.

Q. And that is under your very immediate control? [86]

A. That's right, sir.

Q. Are you familiar with the sets of rings that we have been discussing here, Plaintiff's exhibits A to E inclusive?

A. I am.

Q. And I hand them to you and ask you if you will select the one, if you can, of them which you commenced selling in 1934, and will you pick out the others and tell us when those were sold commercially? (Handing to witness.)

A. This one here is the one we first started.

The Court: Refer to it by the exhibit number.

The Witness: Exhibit A.

Q. That is the first one?

A. Yes, sir.

Q. And the next one was which one, please?

Mr. Groner: Be more specific, will you?

Q. (By Mr. Mellin): Exhibit A. And the next ensemble, marked "Wed Lok" was which of them? Did you say the first one? Would you give us the date, please?

A. Yes, sir. The first one was Exhibit A, March 15—

Q. That is the clerk's date. When did you start exhibiting those, of your knowledge?

A. These were started about the latter part of '33 or '34.

Q. I see. And at that time were they marked "Wed Lok"?

A. Oh, yes.

Q. All right. Continue, please, and give us the

(Testimony of Joseph Norman Wineroth.)

date when, to [87] your knowledge, you commenced selling them, and give the exhibit numbers.

A. Well, this one here was in '33 or '34.

Q. That is exhibit A? A. That's right.

Q. Will you take the next one?

A. The next one that we brought out was Exhibit D.

Q. And when was that brought out, please?

A. This we brought out in 1940, maybe a little after, '41 or '42, just prior to the war.

Q. (By Mr. Mellin): That is Exhibit what?

A. Exhibit D.

Q. D? A. Yes, sir.

Q. And did they have a series name other than Wed Lok?

A. Yes, this was referred to as the Nanette series.

Q. Will you tell us please what is meant and what you mean by "series"?

A. Well, "series"—take this ring first—the particular motif, a design motif; we may make it with two diamonds on the side, or two diamonds on the side and the center, like the one I am referring to. Then we make them with four or six, and we have a motif on there and we call that—we refer to that as a series; we call it the Wed Lok Nanette series, and then Wed Lok A and B series, and this particular one is the Wed Lok Nanette [88] series.

Q. Did you ever at any time discontinue the sale of that ring? A. Never did.

(Testimony of Joseph Norman Wineroth.)

Q. What about during the war period?

A. We didn't discontinue the sale of it. We didn't sell it in quantities, but we sold it. I have orders for them. It was sold.

Q. Will you take the next one and tell us about it, please? By the way, are they still selling the Wed Lok Nanette series today? A. Yes, sir.

Q. And were those rings marked "Wed Lok" during the war?

A. Yes, sir. The next one is Exhibit E.

Q. When did you commence selling it?

A. We commenced selling this soon after the war—I think it was June of 1947, or whenever we got back into production—I imagine it was 1947, June or May of 1947, or 1946. I can't reconcile the date.

Q. Is that ring known by a particular trademark?

A. Well, it is a Wed Lok. I think we gave it a number of G—once we made this in several ornaments, we called it G-4, 5, and 6. Now G-3, that meant there was three stones in the Wed Lok; G-4 meant there was four stones in the Wed Lok; G-5 meant there was five stones in the Wed Lok. That was a means of identifying them. However, it was called a Wed Lok and still is a Wed Lok. [89] That is the way we identified them, in our ads.

Q. All right. Will you take the next one?

A. Now this is Exhibit C. Now this particular style, we made this years ago——

(Testimony of Joseph Norman Wineroth.)

Q. What do you mean by "years ago"? Will you be more specific?

A. Oh, we made this ring, this particular type of ring—it is difficult for me to answer the question, but I will say—oh, it could be 1926 or 1927, this particular locking feature on the ring.

Q. 1926?

A. Yes, this particular one. But that was an entirely different—I am speaking of principle now—but this particular design ring I am holding in my hand we just produced in 1948.

Q. In 1948? A. This was produced in 1948.

Q. All right. Will you take the next one, please? What is the exhibit number, Mr.—

A. This is Exhibit B. This is the Wed Lok. We call this a wedded series.

Q. Were those sold by you commencing when, Mr.—?

A. Well, we have been selling this for some time—I mean three or four years ago we started manufacturing this type of ring.

Q. Now at any time from the period 1934 to the present have you discontinued selling rings marked and known as Wed Lok?

A. At no time to my knowledge did we ever. [90]

Q. And you are familiar with the advertising of Granat Manufacturing Co. to the distributors?

A. I am, sir.

Q. Will you tell us, please, so we will have it

(Testimony of Joseph Norman Wineroth.)

clear, the division between the retail and what has been termed the wholesale, here, so we will have a clear picture? As I understand, the retail store is that the Granat Bros. retail stores sell Wed Loks only—I mean in addition to other things—they sell in San Francisco and Oakland, and that everything outside of those two towns is wholesale?

A. That is correct.

Q. And those sales outside of San Francisco and Oakland would be handled by your firm under your direction? A. That is correct.

Q. Now during the period of 1936—by the way, there was some question this morning whether Wed Loks were being manufactured and sold during the years 1940 and 1941. What do you have to say to that? A. Between the years 1940 and 1941?

Q. Yes. A. Being manufactured and sold?

Q. Yes. Wed Loks.

A. Well, now, in the wholesale department we never did stop—that is, never did stop selling them; we sold them every year I know of since 1934. [91]

Q. And when was the curtailment, before the start of the war, or after the start of the war? That is, the production?

A. The curtailment was right after the start of the war.

Q. So that Wed Loks were sold—what would be the comparison between the sale of the Wed Loks in the years 1940 and 1941 as compared with the years 1938 and 1939?

(Testimony of Joseph Norman Wineroth.)

A. Would you repeat that question, please?

* * *

Q. (By Mr. Mellin): I mean, were there less sales in 1940 and 1941 than in 1938 and 1939, or more?

A. I would say that the average was about the same.

Q. During those years? A. Yes.

Q. And the curtailment happened then in 1942, 1943, 1944 and 1945?

A. Because of our limited productions.

Q. During those war years you testified you sold Wed Lok rings? A. We did.

Q. Continuously, is that correct?

A. That is correct.

Q. Now what was the method of distribution? I mean, how did you sell Wed Loks? By the way, what territory did you sell [92] Wed Loks in during the years 1936 to 1941 inclusive?

A. We sold Wed Loks in every state in the union, throughout the United States.

Q. During those years? A. That is right.

Q. What was your method of selling, that is, handling sales? Would you explain that to us, please?

A. We have three men out of our own office, and our plan was—we called on the principal or the key cities of the United States and then we appointed a distributor in different sections of the United

(Testimony of Joseph Norman Wineroth.)

States. As an example, in the State of Washington, in Seattle we had Mayer Bros.; in Kansas City we had the C. A. Keiger Co., and in Pittsburgh we had the Hall Bros. Co., and in Atlanta, Georgia, we had the Ewing Bros.

Q. Just a moment. To speed this up, you handed me a list yesterday entitled "Granat Manufacturing Distributors and territory covered by them from 1936 to 1941, inclusive, also towns covered by Granat salesmen during the same period." Will you tell the court if that is a correct list, and then I could maybe carry through one special transaction.

A. That is a correct list.

Q. What territories were covered by those various distributors that you speak of?

A. Well, the United States was covered by them.

Q. I mean, what did Mayer Bros. cover—— [93]

A. Mayer Bros. covered Washington, Oregon, Idaho, Montana, Utah, and Wyoming.

Q. Except certain cities you specify?

A. We catch the key cities I mentioned; in this particular territory we keep out the city of Seattle, Spokane and Portland, and they themselves work all the other towns.

Q. And your salesmen work those particular towns you mentioned? A. That is right.

Q. Now how many salesmen, if you know, did the Mayer Bros. have?

A. They had four salesmen covering the various states I mentioned.

(Testimony of Joseph Norman Wineroth.)

Q. Did they cover all the towns in that area that had a jewelry store?

A. I imagine they covered them pretty well. I wouldn't say, I don't know, but that was their business, to get all the business they could, and I presume they would cover every town they could.

Q. What was the next one?

A. The next one was A. Keiger; they have the middle west. Their states were North Dakota, South Dakota, Nebraska, Oklahoma, Texas, Minnesota, Iowa, Missouri, Wisconsin, Illinois and Indiana.

Now with these exceptions: Omaha, Kansas City and Topeka, Memphis, Dallas, El Paso, Houston, Fort Worth, San Antonio, Duluth, Minneapolis, St. Paul, Cedar Rapids, Davenport, Des [94] Moines, Iowa City, Mason City, Sioux City, Waterloo, St. Jo, St. Louis, Madison, LaCrosse, Milwaukee, Waukesha, Chicago, Duluth, Moline, Peoria, Rockford, Evansville, Fort Wayne, Gary, Indianapolis and South Bend——

Q. Who made those towns?

A. The towns, the last group of towns made by our own salesmen.

Q. How often would they make those towns?

A. Well, some of them we would make twice a year.

Mr. Naylor: May we limit this in time?

Mr. Mellin: This is 1934, 1936 to 1941—is that the period?

A. Yes. Some of the towns we made twice a

(Testimony of Joseph Norman Wineroth.)

year, some three or four times a year, depending on the size of the town. Some of the towns we didn't cover as often as some of the larger towns.

Q. How many salesmen did they have, this C. A. Keiger Co.? A. They had seven salesmen.

Q. Would they, like in the other instances, make the towns? A. I suppose so.

Q. Go to the next one.

A. The next one was Hall Bros., and they covered the states of Ohio, Pennsylvania, West Virginia, Virginia, Maryland, and Michigan with the exception of the following cities: Dayton, Cincinnati, Cleveland, Toledo, Youngstown and Columbus, Philadelphia, Pittsburgh, Scranton, Wilkes-Barre, Norfolk, Richmond, Baltimore, and Ann Harbor, Bay City and Detroit, Flint, Kalamazoo, Grand Rapids, Lansing, Muskegon, Port Huron, and Saginaw. [95]

Q. How many salesmen, if you know, do the distributors have there?

A. Hall Bros. have four.

Q. And they were supposed to make the remaining towns in that area like the others?

A. That is right.

Q. Now with the other two dealers, a like situation—What was the next one?

A. We had Ewing Bros. here. They made the southern states, consisting of Tennessee, Mississippi, Louisiana, Georgia, North Carolina, South Carolina, Florida and Alabama with the excep-

(Testimony of Joseph Norman Wineroth.)

tion of Memphis, New Orleans, Atlanta, Savannah, Birmingham and Montgomery.

Q. And the next one?

A. That is all, sir.

Q. That is all.

Mr. Mellin: May I offer this in evidence as a compilation of the witness' testimony?

(Document referred to was thereupon received in evidence and marked Plaintiff's Exhibit Y.)

Q. (By Mr. Mellin): Now you handed me yesterday a list of what is termed, "Wed Lok dealers sold directly by Granat Manufacturing Co. during the period 1934 to 1941, inclusive, but not including amounts sold by distributors, number of towns 212, number of states 37, and Hawaii, and number of dealers 615." By dealers [96] I understand that would be customers?

A. Yes.

Q. And I ask you—may I withdraw that last part. Will you tell us, please, did you get all the distributors, did you get them all at the same time? Do we have an accurate record here?

A. The first one was the C. A. Keiger Co.

Q. When was that?

A. That was in about 1934, and then a couple of years later we added the Hall Bros. account, and I believe the following year we had the Ewing Bros. in Atlanta.

(Testimony of Joseph Norman Wineroth.)

Q. That would be about 1936 or 1937?

A. I think it would be earlier than 1937, about 1936.

Q. And the final one?

A. Then the final one that following year, or maybe that same year, I just can't reconcile myself to that, but I know after we got started we took on the others. We had just one distributor at one time.

Q. This list I have would be a list of customers to which you sold directly, which had built up from 1934 to 1941; that is, the list of dealers I have in my hand, is that correct when it says that the number of towns was 212, the number of states covered was the number given, and the number of dealers?

A. That is correct. I compared this.

Q. And this has the names and numbers of those various accounts?

A. That is correct. [97]

Q. The Wed Lok accounts during that period?

A. That is correct.

Mr. Mellin: I will offer this in evidence.

(Document referred to above was received in evidence and marked Plaintiff's Exhibit Z.)

Q. (By Mr. Mellin): Now as I understand the Exhibit Z which I just handed you covers merely those sold directly by Granat salesmen, is that correct? A. That is correct, sir.

(Testimony of Joseph Norman Wineroth.)

Q. Now do you know of your own knowledge how many accounts you sold, total different accounts you sold during that period of time, including the accounts in Exhibit Z and the accounts that were sold by your distributors?

A. Well, we sold about 5000 with both methods of distribution, through our own salesmen and the distribution that we had through our distributors.

Q. That would be spread out through the whole United States? A. That is correct.

Q. And that would be 5000 different Wed Lok dealers during the period from 1934 to 1941?

A. That is correct.

Q. Now did you subsequently discontinue that method of selling—may I strike that, your Honor. I have gone a little ahead of myself. At that time did *you completely* mounted rings such as A to E, or did you sell only blanks? [98]

A. Well, first of all we sold blanks and we sold what we call semi-mounted, meaning the semi-blanks with the small diamonds in, including the center stone; then we sold completed diamond rings. We sold different styles, blanks, semi-mounted and full-mounted.

Q. The blank is without any diamonds, as I understand it?

A. The blank is without any diamonds, yes.

Q. Did you or did you not discontinue that practice?

(Testimony of Joseph Norman Wineroth.)

A. Yes, we discontinued that practice.

Q. When did you discontinue it and why?

A. When we found curtailment in our factory—when we were forced to make a little amount of merchandise due to the closing down of the factory because of men going in the service——

Q. That would be the end of 1941?

A. That is correct. Then we only sold diamond rings, we didn't sell blanks because we couldn't get enough volume to maintain our office or anything else.

Q. At that time did you discontinue selling by distributors?

A. That is during the war. Then we discontinued supplying our distributors. We couldn't supply enough rings for anybody—I mean it was a joke what we could produce—I mean if you have twenty men for the United States, we couldn't supply anybody with any quality.

Q. Now what about your records on the sale of Wed Lok rings, did you keep records for any appreciable length of time back? [99]

A. On the sale of Wed Lok rings?

Q. Yes. I mean records of sales. For example, do you have records that you can determine the number of sales of actual Wed Lok rings during the years, say, 1944, 1945 and 1946?

A. Well, I can go back maybe three or four years, but I can't go back too many years.

Q. Do you keep records in your office of the

(Testimony of Joseph Norman Wineroth.)

purchases of these rings as distinguished one from the other, from Granat Bros. in your office?

A. No, we don't. We can date that information up. I don't have a complete file on it.

Q. I have in my hand a bundle of invoices which you gave me—I think counsel has seen them (exhibiting to counsel).

Q. (By Mr. Mellin): They are for the years 1944, 1945 and 1946. Do you have any records earlier than 1944 at all?

A. I don't believe so.

Mr. Groner: May it please your Honor, the defendant is going to object to these——

Mr. Mellin: I haven't offered them as yet.

Mr. Groner: I beg your pardon. Please excuse me.

Q. (By Mr. Mellin): Can you identify on these invoices Wed Lok rings, and will you tell us how you can identify them, please?

A. By the number.

Q. By the number, you mean No. 39574 RW?

A. Yes. There is a design number. For instance, the first item [100] my attention is called to here is 39574 RW. That is a Nanette four-stone wedding ring.

Q. Are those that you have marked in that bundle?

A. Those that I have marked with a red check are Wed Lok rings.

Q. Marked Wed Lok?

(Testimony of Joseph Norman Wineroth.)

A. That is correct.

Q. And sold during the period 1944, 1945 and 1946?

A. That is correct.

Q. Now you told me that you didn't keep your records past four years, of any kind, is that correct?

A. That is correct.

O. Other than totals?

A. That is correct.

Q. I added these up in your presence the other day, and the sales of Wed Lok ensembles during the year 1944 was approximately 525, in 1945—

A. I think I have those figures.

Q. You have those figures? A. Yes.

Q. Will you read them into the record, please? In these figures would be ensembles, that is, a Wed Lok wedding ring and engagement ring, is that correct?

A. That is correct.

Q. Now would you read those figures into the record, please?

A. For 1944 there was 550 sets; in 1945, 254 sets; in 1946 there [101] was 530 sets.

Q. Were those, according to these invoices, distributed rather evenly throughout those years?

A. We tried to distribute them as evenly as possible, tried to give each of our accounts some portion of them.

Q. Now you heard counsel this morning asking Mr. Joseph Granat if it were correct that certain Wed Lok dealers were unable to obtain Wed

(Testimony of Joseph Norman Wineroth.)

Lok rings during the war years of 1942, 1943, 1944, 1945, and 1946. What have you to say of that?

A. Just repeat that question again.

Q. I will reframe it. You heard Mr. Groner read portions of the deposition of Mr. Joseph Granat?

A. Yes.

Q. In which the deponents who are Wed Lok dealers, stated that they were unable to obtain Wed Loks during the war. Would you tell us about that, please?

A. Well, it is only natural—we only produced a few—but whatever we did get we distributed to some of our accounts. There may have been an account here and there that didn't get a set, but others got maybe two or three sets, but we tried to distribute them. We can't break them up, but we did the best we could.

Q. What did you territorially, if you know?

A. We tried to distribute them equably, that is, give each of [102] our customers a fair share of what we produced.

Q. Now Mr. Groner particularly spoke of an account—I don't have the witness—Mr. Groner particularly spoke of a man—not in Portland, south of Portland—what was it?

Mr. Hursh: Salem.

Mr. Mellin: Salem, yes. The witness' name was Jackson. Mr. Jackson said he was unable to obtain Wed Lok rings during the war. Do you know the reason why?

(Testimony of Joseph Norman Wineroth.)

A. Frankly, I don't recollect, but when we sold Mr. Jackson Wed Loks or anything he wasn't one of our customers. He wasn't established in the town. I believe the man was in the service—I don't know—when he got out of the service he worked for one of the other stores there and he established his business there and he probably contacted our salesman, and we don't just open up accounts promiscuously; we wait until the time when we feel that we want to sell them, and that is what he is referring to, I believe.

Q. I see.

A. We have no objection to selling him now.

Q. Now from your knowledge of the business of Granat Manufacturing Co., do you know what proportion during the years 1936, 1937, 1938, 1939, 1940, and 1941—what proportion of your total sales was represented by Wed Lok rings?

A. Yes, about 25 per cent of our sales were represented by Wed Lok rings. [103]

Q. And that is in dollar value?

A. That is correct.

Q. Now, do you have with you for those years the sales of the Granat Manufacturing Co., the years I just mentioned?

A. I have a group—

Q. And they were obtained from your books?

A. They were. What was the first year you asked?

Q. 1936.

(Testimony of Joseph Norman Wineroth.)

A. 1936 there was \$604,706.03; in 1937, \$753,-768.65; in 1938 there was \$556,412.24; in 1939 there was \$655,907.13; in 1940, \$731,923.28; in 1941 there was \$854,442.72.

Q. Now do you have the years from June, 1946, to June of 1947?

Mr. Groner: Counsel, may I interrupt you just a moment?

Mr. Mellin: Sure.

Mr. Groner: Am I correct in understanding that is the total?

Mr. Mellin: That is total of Wed Loks.

Q. Do you have that for the period from June, 1946, to June of 1947?

A. \$1,848,194.42.

Mr. Naylor: What period?

Mr. Mellin: That is June, 1946, to June, 1947. I might explain there was a change in the fiscal year—

Mr. Naylor: Is that a ten-month period?

Mr. Mellin: No, a twelve-month period; June of 1946 to [104] June of 1947.

Mr. Naylor: I beg your pardon.

Q. (By Mr. Mellin): Do you have that same period for 1947-48? A. \$2,624,200.68.

Q. Now for the period 1946, 1947, 1948 and 1949 that you read what percentage to your knowledge was that Wed Lok?

A. Well, our Wed Lok business today or since right after the war when we started producing again represents 50 per cent of our sales.

(Testimony of Joseph Norman Wineroth.)

Q. 50 per cent?

A. That is correct.

Q. I notice there is quite a difference, the early sales were listed in the neighborhood of 800,000; now in 1946 and 1947 it is a million and some hundred thousand. Does the fact you stopped selling blanks have anything to do with it?

A. Well, there are two reasons for that: In the first place we stopped selling to distributors. When we sold them we sold blanks. Today we sell complete diamond rings through our own sales force. That accounts for the differential. We had three men then; today we have eight men. We sold blanks then; today we sell complete rings.

Q. So the actual number of rings, ensembles, that went to the customers, were probably just as great in those days as now?

A. That is right.

Q. As I understand it, after the war was over you adopted a new [105] policy of selling by having your own salesmen. When was that?

A. That was right in 1946, as soon as we got back into production and were able to get men, we increased our sales ourselves and went after business.

Q. You no longer have distributors?

A. No distributors, only sell direct.

Q. By the way, approximately what is the retail value of those rings A to E, do you know? Take any of them.

(Testimony of Joseph Norman Wineroth.)

A. I would say they would sell anywhere from \$225 to \$1500.

Q. In that one group? A. Yes.

Q. Then you establish your own accounts by your salesmen? A. Correct.

Q. And you handed me a list yesterday of Wed Lok dealers during the year 1947 to August, 1948, number of towns 602, number of states 47, also the Hawaiian Islands and Washington, D. C.; number of dealers 1069, and following a list of dealers and the various towns in which they were located. Is that list true and correct as represented on the cover thereof?

A. That is correct, sir.

Q. And those are all Wed Lok dealers, are they? A. I would say so.

Mr. Mellin: I offer that list in evidence as next in order.

(List of dealers and towns was thereupon received in evidence and marked Plaintiff's Exhibit AA.) [106]

Q. (By Mr. Mellin): By the way, do you have—he introduced a circular letter this morning; do you have that exhibit? Where is the circular letter? May I be indulged, your Honor?

Q. I show your letter which counsel referred to this morning as being sent as a circular letter dated August 13, 1948, and addressed to our customers, signed, "Granat Manufacturing Co." Can you identify that letter?

(Testimony of Joseph Norman Wineroth.)

A. Yes, this is the letter that was sent to our customers.

Q. Would you tell us, please, if they were sent to your customers as of your books at that time or a portion of them, or just in any abandon?

A. Oh, no, they were taken from our records, our books of customers who have bought our Wed Lok rings.

Q. Do you know the reason it was necessary that letter be written?

A. It seems to me at the time there was confusion on this thing.

Mr. Naylor: I didn't get your answer.

A. There seemed to be some confusion and our salesmen were writing in asking us what we were doing—their customers or our customers wanted to know from them what we were doing about the ads that were appearing—we speak of the Feature Lock ads that were appearing, and these customers wanted to know what we were going to do about them, and they asked our salesmen what we were going to do about that, and we thought the best way to handle it in one fell swoop was to write them a letter, even those that [107] did not inquire, and let them know just how we felt about the matter.

Mr. Mellin: May we offer that letter in evidence?

Mr. Groner: It is in already.

Mr. Mellin: We don't have a number.

(Testimony of Joseph Norman Wineroth.)

Mr. Groner: It is 15.

The Clerk: Exhibit 15 in the deposition?

Mr. Groner: No, 15 in San Francisco.

Mr. Mellin: You haven't offered the deposition yet. I don't know whether it is going in or not.

Mr. Groner: I thought you said everything was going in.

(Document referred to was received in evidence and marked Plaintiff's Exhibit BB.)

Q. (By Mr. Mellin): Now, are you familiar with, and from your knowledge know, of the advertising—I am differentiating the retail from wholesale—as I understand, you don't have anything to do with the retail advertising?

A. Nothing whatsoever.

Q. The two retail stores Mr. Granat takes care of, but he has nothing to do with the wholesale advertising?

A. We discuss it between us, but it is my responsibility.

Q. That has been in the last few years. How about before the Granats were connected with it?

A. Before the Granats—we handled it in our own office—that is, as far as the financial was concerned. [108]

Q. What was done with respect to advertising of Wed Loks by Granat Manufacturing, if anything, during the years 1934 to 1941, inclusive?

A. We did a certain amount of advertising in

(Testimony of Joseph Norman Wineroth.)

the trade journals and by cards, what we call window cards, display cards, and things like that.

Q. Do you know what money, if any, was appropriated for advertising?

A. Yes, we appropriated about 3 per cent of our sales, was the amount we set aside.

Q. 3 per cent of the total sales?

A. Of the total sales.

Q. And did that all represent Wed Lok, or only some portion of that?

A. Well, at that time it didn't represent—we didn't intend it all for Wed Lok. We would spend, oh, at that time we would probably spend from 50 per cent to 60 per cent of our appropriation, when it first came out.

Q. For Wed Lok? A. Yes.

Q. And did that increase or decrease?

A. That increased as the sets, as the rings and the name became more popular. We concentrated on it. We spent a bigger percentage of our appropriation for Wed Loks.

Q. Now as I understand then, from '34 up into and including '41, [109] at least 3 per cent of the total sales of Granat Manufacturing, which you read into the record, were spent in advertising?

A. That is correct, sir.

Q. And in the early years approximately 50 to 60 per cent of that appropriation for Wed Lok?

A. That's correct.

Q. Now, how about the years '47 and '48?

(Testimony of Joseph Norman Wineroth.)

Mr. Groner: May I interrupt? Are there any records on that?

Mr. Mellin: We have no records, your Honor.

Mr. Groner: It seems to me that this is a very loose type of testimony, your Honor.

The Court: Oh, that goes to the weight.

Mr. Mellin: It goes to the weight, your Honor, and he says he had knowledge of it.

Q. Now, are you familiar with the—strike that. Were there any advertising by dealers during those years?

A. Oh, yes, quite a bit.

Q. And how do you know that?

A. Well, we subscribe to a clipping service and these ads would be clipped. What they call a tear sheet, or the actual ads, would be sent to us by this clipping service, by this bureau. We have subscribed to that service for many years.

Q. Would those ads, or would they not, pass through your hands? A. Oh, yes. [110]

Q. Did you contribute in any fashion to the dealers' advertising?

A. Well, not in that—the only thing we did for the dealer was to supply him with a prepared mat, or we would pay none of his space, as we would not pay for his space.

Q. In other words, you would furnish the distributors with mats and your customers with mats?

A. Well, we furnished our customers with mats. The distributors bought their own mats. That is,

(Testimony of Joseph Norman Wineroth.)

we prepared the copy and the plate and would turn it over to the companies that made the mats, and they would order their mats in conjunction with ours. That is, those that we distributed.

Q. By the way, when you said that you kept records not longer than four or five years back, that included everything except total sales, and so forth, isn't that correct? A. That's correct.

Q. Talking of mats, I hand you two sheets labeled "Wed Lok" which appear to be sort of a conglomerate of a number of mats, and I ask you if you can identify them (handing to witness).

A. Well, these mats would appear at about '35 or '36—in through there.

Q. In through that period?

A. I would say so.

Q. And those various mats—those were sent to customers, were they, and distributors?

A. That is correct. [111]

Q. And part of the advertising went to the preparation of *that* mats? A. Oh, yes.

Mr. Mellin: May I offer those in evidence as Plaintiff's next in order?

The Clerk: CC.

(Sheets labeled "Wed Lok" were thereupon received in evidence and marked Plaintiff's Exhibit CC.)

Q. (By Mr. Mellin): Now, I asked you to locate all the mats you could find during that period,

(Testimony of Joseph Norman Wineroth.)

and you told me those are the only two you can locate other than those that perhaps went in with your deposition? A. That is correct.

Q. You kept no copy? A. No.

Q. Now, have you made any effort to locate advertisements by your dealers, that is, newspaper advertisements? Or is that the form it usually took, newspaper advertisements, your dealers?

A. Well, yes.

Q. In the early years?

A. Yes, and radio——

Q. The early years?

A. Yes, '34 to '41. That would be mostly newspaper.

Q. Mostly newspaper? A. Yes. [112]

Q. And those are the clippings that you spoke of that would come to you? A. Yes.

Q. What became of those clippings after they would pass through your hands?

A. Well, when they passed through my hands, I would send them to the salesman in whatever particular territory that was represented there. I would send it to the salesman so that he could look at them.

Q. What was the purpose of you and the salesman looking at them?

A. Well, to know what our customers were doing, and then when the salesman would look at them, he would throw them away. There was no purpose in accumulating them. We would get them monthly.

(Testimony of Joseph Norman Wineroth.)

Q. And did that custom prevail all the way through, at about the time, or just before this suit was filed? A. Oh, yes, we still do it.

Q. Now, did you make any effort to locate newspaper ads by Granat, "Wed Lok" customers, during the years '34 to '41, inclusive?

A. We did.

Q. And in doing that how did you approach it? I mean, what did you do? Did you ask the dealers for them, or what?

A. Yes, we asked the dealers to look through their files and do whatever they could to dig these ads of Wed Lok in the particular years that we were interested in up. [113]

Q. And what was your usual response, if you had one?

A. Well, in most instances, they were sorry that they didn't keep a file, or they had no way of getting them; but we did manage to get quite a number. We had some response. I think it was——

Q. Now, the ones that you have got, is that from your knowledge of them passing through your hands? Was that a small or a large proportion?

A. That was a very small percentage of it. I mean, you don't—I don't think in any field you can——

* * *

Q. (By Mr. Mellin): Now, we were speaking of the dealer advertisements and newspapers. What you said with respect to accumulating them

(Testimony of Joseph Norman Wineroth.)

from 1934 to 1941, inclusive. Did that—or attempting to find them for the years '47 and up to August of '48, when this suit was filed?

A. That is correct, sir.

Q. And as I understood you, you were able to locate but a small portion of those ads?

A. That is true.

Q. Now, you supplied me with separate tear sheets bound in three volumes, which are labeled "Advertisements Prior to August 3, 1948," and were those Wed Lok—are those all Wed Lok ads by dealers?

A. Well, I will have to see them again.

Q. Will you take a look?

A. May I come over there?

Q. I will put them on the desk here, if I may, on the table.

A. Well, if you will put them here (indicating). [114]

Q. Volume 1, volume 2 and volume 3, and they are bound at the bottom (placing on witness stand in front of witness.)

* * *

Mr. Mellin: May I offer those in evidence as Volume 1 being one exhibit and Volume 2 as one exhibit and Volume 3 as one exhibit?

The Court: Yes.

The Clerk: DD, EE and FF.

(The three volumes of Wed Lok ads referred to were [115] received in evidence and marked

(Testimony of Joseph Norman Wineroth.)

respectively Plaintiff's Exhibit DD, EE and FF.)

Mr. Mellin: May I state for the record and for Mr. Groner's benefit that those are not bound chronologically; they are bound chronologically by dealer. It doesn't appear, but I shall furnish a list. I will have a list that I will offer that shows all the ads, and where they appear, so that there will be no need to examine them.

Q. (By Mr. Mellin): Now, Mr. Wineroth, I hand you lineage report of retail advertising, Wed Lok rings, prior to August 1, 1941, and to your knowledge was this list made from these exhibits (indicating)?

Mr. Groner: Excuse me. You said '41.

Mr. Mellin: I beg your pardon. That should have been prior to August 1948.

Mr. Groner: Was this a compilation or a lineage report shown in that?

Mr. Mellin: It is a list of lineage shown, giving the State and city.

Mr. Groner: I don't care about that; but it is a compilation of the material in those three volumes and nothing else?

Mr. Mellin: And nothing else.

Mr. Groner: You and Mr. Wineroth checked it yourselves?

Mr. Mellin: Yes.

Mr. Groner: All right; that is satisfactory. [116]

Mr. Mellin: And it gives the date of the publica-

(Testimony of Joseph Norman Wineroth.)

tion, which is true whether it is a photostat or an actual tear sheet or a photostat of a tear sheet.

Q. Is that a correct compilation?

A. That is a correct compilation.

Mr. Mellin: And I offer that in evidence as the plaintiff's next in order.

Mr. Naylor: Do you have a copy of that?

Mr. Mellin: I do, but I have only one. They were supposed to make three, but they didn't.

The Clerk: GG.

(Compilation of contents of three previous exhibits was received in evidence and marked Plaintiff's Exhibit GG.)

Q. (By Mr. Mellin): Do you subscribe, or your firm or associates subscribe, Advertising Check Bureau, I & C, for lineage reports on retail advertising cost reports for Wed Lok rings?

A. We do.

Q. And did you or someone in your behalf request such a detailed report for all daily and Sunday newspapers in all cities for the month of July 1948?

A. We did.

Q. I hand you—would you tell us, please, what that service is?

A. Well, it is a clipping service. Now, we not only get—they not only clip our own ads, but they clip our competitors [117] ads. We want to know what our competitors are doing, so as to see what progress we are making. They not only send us—

(Testimony of Joseph Norman Wineroth.)

you see, they send us our own ads, and they also give us on the ads our competitors put in, like Art Carve or Feature Lock or any organization. We get all the information. The ads that appear in all the various cities, we subscribe to them.

Q. Now, referring to——

A. Because it is each competitor, and how much space they took and how much money he spent.

Q. Now, with particular respect to Wed Lok, I have in front of me a report which you handed me, which gives the lineage of Wed Lok ads appearing for the month of July 1948, and I ask you if that is the report of that bureau for that period (handing to witness).

A. That is correct.

Q. Now, what information, generally, does that give you? Starting from the left-hand column, please——

Mr. Groner: May it please your Honor, before we get into any detail of that, I should like to register an objection to either the introduction of the material in evidence or testimony based upon the material. First off, it is after the date of the notification by plaintiff to the defendant. Second, it is pure and unadulterated hearsay.

The Court: Sustained.

Q. (By Mr. Mellin): Now, with respect to advertising by [118] Granat Manufacturing Company in national advertisements, do you advertise, and

(Testimony of Joseph Norman Wineroth.)

have you advertised in any magazines prior to August 1948—

Mr. Mellin: And I submit, your Honor, that that is the correct date. This suit was brought at that time, and that is when the rights accrue here. Now, we don't know precisely when they adopted the—

The Court: Well, I sustained the last objection on the hearsay ground. It was not as to the date.

Mr. Mellin: Yes, on the hearsay ground. Thank you.

Would you read that to me? I am sorry.

(Previous question read.)

Q. (Continuing.) That is, advertised the word "Wed Lok"? A. We have.

Q. And I hand you the Northwestern Jeweler for August 1948, and ask you if those ads were put there at the instance of Granat Manufacturing Company (handing to witness), and I ask you if you can identify it.

A. Yes. This is our Wed Lok ad. This is the Northwestern Jeweler; that is the ad that appeared there.

Q. What sort of a publication is that?

A. It is a magazine that is what we call a sectional magazine. Is that the Northwestern?

Q. Northwestern, yes.

A. That is a sectional magazine, a jewelers' magazine that [119] goes in that Northwestern section. It is devoted to the jewelry trade in that area.

(Testimony of Joseph Norman Wineroth.)

Mr. Mellin: May I offer this photostatic copy of the ads in evidence as Plaintiff's next in order?

The Clerk: HH.

(Copy of ads appearing in Northwestern Jeweler was received in evidence and marked Plaintiff's Exhibit HH.)

Mr. Groner: No objection.

Q. (By Mr. Mellin): I hand you photostats of certain pages of the Jewelers' Circular Keystone, of the issues of June 1947, August 1947, March 1948, May 1948, June 1948, July 1948 and August 1948, and I will ask you if those Wed Lok ads appeared in those publications as indicated (handing to witness). A. They did.

Q. And those are Wed Lok ads for Granat rings? A. These are all Wed Lok ads.

Q. And what is the Jewelers' Circular Keystone?

A. That is a trade magazine that is distributed nationally. It is distributed all throughout the country.

Q. Who does it go to?

A. It goes to all the retail and wholesale jewelers, or practically anybody in the jewelry business.

Mr. Mellin: May I offer that in evidence as next in order, those particular pages, if your Honor please?

The Clerk: II. [120]

(Copies of ads in Jewelers' Circular Key-

(Testimony of Joseph Norman Wineroth.)

stone referred to were received in evidence and marked Plaintiff's Exhibit II.)

Q. (By Mr. Mellin): I hand you a photostatic copy of one of the pages of the National Jeweler, issued in August 1948, and I ask you if that ad appeared, that Wed Lok appeared (handing to witness). A. That is correct, sir.

Mr. Groner: We assume that.

A. That is a national magazine. That goes in nationally.

Q. (By Mr. Mellin): Now, I hand you the Pacific Goldsmith for February, April, May, June, July and August (handing to witness).

A. That is a section, on the Pacific Coast.

Q. And those are all Wed Lok ads that were put in this publication? A. Yes, sir.

Mr. Mellin: I offer those as the next two in order.

The Clerk: JJ and KK.

(Copy of ad in National Jeweler and copies of ads in Pacific Goldsmith were received in evidence and marked Plaintiff's Exhibits JJ and KK respectively.)

Q. (By Mr. Mellin): Now, I hand you a pamphlet containing various photostats of ads appearing in Vogue for June 15, 1947, August 15, 1947, October 15, 1947, May 1, 1948, June 1, 1948, August 15, 1948, and I ask you if those are all Wed Lok ads

(Testimony of Joseph Norman Wineroth.)

which were caused to be published in Vogue (handing to witness). [121] A. They are, sir.

Q. Now, that has a national circulation, of course? A. Yes.

Q. Now, by the way, do you know the cost of such a one-page ad, like this, in Vogue?

A. It would run around \$3500 to \$4000, I am quite sure, sir.

Mr. Mellin: May I offer that as plaintiff's next in order?

The Clerk: LL.

(Copies of ads appearing in Vogue referred to were received in evidence and marked Plaintiff's Exhibit LL.)

Q. (By Mr. Mellin): I hand you a photostat of full-page ads appearing in Southern Jeweler of August 14, 1948, and ask you if that is a Wed Lok ad (handing to witness).

A. That goes to the Southern States, the same as the other sectional magazines; it goes to the Southern dealers.

Q. I hand you the same for July '48 and August '48, of the Mid-Continent (handing to witness).

A. That is the same sort of a magazine, for the Middle West.

Mr. Mellin: May I offer those two as plaintiff's next in order?

The Clerk: MM and NN.

(Testimony of Joseph Norman Wineroth.)

(Ads in Southern Jeweler and Mid-Continent were received in evidence and marked Plaintiff's Exhibits MM and NN.)

Q. (By Mr. Mellin): Now, other than advertising by dealers and [122] newspapers, and advertising in those publications of Wed Lok, does Granat do any advertising display, such as counter cards that I have in my hand (indicating)?

A. Oh, yes.

Q. Now, I hand you one of them, which says, "Two become one in Wed Lok for America's bride, rings by Granat," and I ask you if you can tell us what it is, how it is used and approximately when it was produced (handing to witness).

A. Well, this particular card was produced at the beginning of '48, I believe. I am almost positive it was.

Q. And can you tell me, please, how many were produced?

A. Well, we ordered a thousand of these.

Q. And what are they used for?

A. Well, they are used for either—either a jeweler will put them on his show case or put them in his window, and he may put them in a window with—in conjunction with a display of rings. He uses them in both places, in the window and on the show case.

Q. And will you tell us, if you know, how those were distributed? Were they distributed to all your dealers or the majority of them, or what?

(Testimony of Joseph Norman Wineroth.)

A. Oh, yes, they were sent to all dealers, whatever we had on the mailing list at the time.

Q. I hand you another counter card, seen in Vogue, with Wed Lok, and if that is a counter card for the same purpose? [123]

A. As the other. This is for the same purpose as the other.

Q. Now, can you tell us how many of those were ordered?

A. We ordered 1500 of these, of this particular one.

Q. And when?

A. Well, this was just recently, I believe; it is in '48, the latter part of '48. The customers' list was growing, and I guess we needed more of them.

Mr. Mellin: I offer them in evidence as plaintiff's next in order.

The Clerk: OO and PP.

(Counter cards used by jewelers and counter card appearing in Vogue were received in evidence and marked Plaintiff's Exhibits OO and PP.)

Mr. Groner: May it be understood that defendants' objection to anything after the date of notice is preserved, your Honor?

The Court: Very well.

Q. (By Mr. Mellin): Now, I hand you circulars marked "Wed Lok Rings by Granat," and

(Testimony of Joseph Norman Wineroth.)
in which appears in writing "200,000 printed 1947."
Whose writing is that (handing to witness)?

A. That is my writing.

Q. And would you tell us, please, what those circulars are and what is the meaning of the writing?

A. Well, the writing shows the amount we ordered. In other words, we ordered 200,000 of them, and they are what we call [124] a pamphlet.

Q. What is done with them?

A. Well, we give them to our dealers, and they imprint their name on them and distribute them to their customers. It shows our Wed Lok rings; it is complete.

Q. Now, what significance, if any, does the date 1947 have?

A. Well, this particular group of rings?

Q. I mean on the front of it, 200,000, 1947.

A. Well, we ordered 200,000 in 1947.

Q. Oh, that is what it means? A. Yes.

Mr. Mellin: I will offer that in evidence as plaintiff's next in order.

The Clerk: QQ.

(Advertising pamphlet referred to was received in evidence and marked Plaintiff's Exhibit QQ.)

Q. (By Mr. Mellin): I have a second pamphlet of a similar nature which states on it "150,000 ordered between January and August 1948," marked

(Testimony of Joseph Norman Wineroth.)

“Wed Lok Rings by Granat” (handing to witness), and I ask you if that pamphlet serves a similar purpose.

A. Well, this is the second one. This one came out after that one (indicating).

Q. In other words, those were published, or those were issued, during the dates appearing thereon?

A. That's right, and we increased the size of it, you will [125] notice, because we had a few new rings, and we wanted to increase it, so we ordered 150,000 of these in 1948.

Q. And those are likewise distributed to your customers?

A. The same effort is used.

The Clerk: Exhibit RR.

(Advertising pamphlets marked “150,000 ordered between January and August 1948” were received in evidence and marked Plaintiff's Exhibit RR.)

Q. (By Mr. Mellin): Now, I hand you a series of display cards displaying the words “Wed Lok Rings by Granat,” “Interlocking Series,” “New Diamond Rings by Granat,” and so forth; and they are all marked apparently with the date. Would you tell us if those were produced on those dates, and issued, and if so, how many and to whom (handing to witness)?

A. Well, these two were brought out in 1947, and these are the cards that are used in connection with a display fixture. Now, each year we

(Testimony of Joseph Norman Wineroth.)

change the fixture, and we try to change the card somewhat. These two were produced in '47, and this group here of five were produced in '48. Now, here is the two that we produced this year, for fixtures, for the windows (indicating).

Mr. Mellin: May I offer all of those——

Q. And they are put on trays on the counter?

A. Yes.

Q. And how many of those were made?

A. Well, we made, of this one here, about 600, and of these [126] here about a thousand in all. That is, not a thousand of each, but of the group—we would order 200 of this, 300 of that—I just can't give you the exact figures. But there is about a thousand in all. I know that because we order a thousand fixtures and we need a thousand cards to go on the various fixtures. You see, there are five different types of fixtures there.

Mr. Mellin: May I offer those as one exhibit, your Honor?

The Court: Yes.

Mr. Mellin: Next in order.

The Clerk: SS.

(Miscellaneous display cards were received in evidence and marked Plaintiff's Exhibit SS.)

Q. (By Mr. Mellin): Now, with respect to Wed Lok ads by dealers, you notice that Wed Lok is, for example, on this mat, Exhibit CC, it appears in some sort of a script in some places. Is it a fact

(Testimony of Joseph Norman Wineroth.)

that the dealers' use of your mats resulted in that uniformity of display of the word "Wed Lok" throughout those ads?

A. Well, that would be correct, because in most instances we either supply a mat of a complete ad, or we supply the material that the jewelers can make up their own ads from. We would supply them with what we call the "cut" of the name and the ring, the rings themselves, and they make up their own ads. But in most instances, the smaller jewelers in particular use our [127] prepared mat of an ad.

Q. Now, Mr. Groner this morning called attention to Mr. Granat of the body of an ad by Mr. Giaccobi, in which the ad says, "These two rings are wedlocked together." Was that a part of any of your advertising?

A. Well, if I could see the ad, I could tell you.

Q. He had reference to Plaintiff's Exhibit 23 to Giaccobi's advertisement. Is there any mat or anything there supplied by Granat Bros. or Granat Manufacturing (handing to witness)?

A. No; the only thing that he has that we supplied was this here (indicating).

Q. By "this here" you mean the way "Wed Lok" is displayed?

A. We supplied this, this here (indicating).

Q. "Wed Lok"?

A. "Wed Lok." We supplied this drawing.

Q. The drawing of the ring?

(Testimony of Joseph Norman Wineroth.)

A. That is correct. Now, the rest——

Mr. Groner: Pardon me, please.

The Witness: Surely.

Mr. Groner: Mr. Mellin, I don't like to take exception to what you said, but the witness has pointed to the entire statement at the top of the advertisement, which is the only thing that I referred to in cross-examining Mr. Granat this morning.

The Witness: Now, wait a minute—— [128]

Mr. Mellin: You said he referred to Wed Lok.

A. I am referring to this, sir; we don't supply that.

Mr. Mellin: You don't supply what? Will you read it?

A. We don't supply a man—if you want to show that material, I will show you. We supply five——

Mr. Groner: I just want to know about this——

Mr. Mellin: You said, "We don't supply that." Will you read that.

A. That word "Wed Lok," we have that written out in script. I can give you that in five different sizes for a merchant to make up his ad; he can make it up in five different sizes. We supply five different sizes of ads the dealer makes up himself. They have their own agency. They make their own ads.

Q. And this statement, "These are the rings that together" is his own words?

(Testimony of Joseph Norman Wineroth.)

A. That is correct. That has nothing to do with us.

Q. Now, prior to—By the way, when did you first see the trade-mark Feature-Lok in connection with diamond rings, if you recall?

A. Let's see. I think that was in 1947 or—the latter part of 1947 or 1948. I don't know; I just can't reconcile myself to that now. I think it was 1947.

Q. Well, this suit was filed in August 1948. Would that refresh your recollection?

A. I guess it was 1948. [129]

Q. Prior to the time you saw that trade-mark "Feature-Lok" used in connection with diamond ring ensembles, at any time had you ever seen a combination trade-mark incorporating the word "Lok" in it—

A. I never had.

Q. Wait a minute.—to be used in connection with diamond rings?

A. I never had.

Q. So that during the period you sold Wed Loks, that is, from 1934 to 1948, or up until the time you saw Feature-Lok in 1948 you had never seen the word "Lok" incorporated in any trade-mark applying to rings?

A. I never had seen the word—well, yes. Now, wait a minute. There was a firm in New York, Untermeyer & Robbins—

Q. When was this?

A. I think in 1947, the firm of Untermeyer & Robbins brought out an ad in one of the national

(Testimony of Joseph Norman Wineroth.)

magazines and it used the word—I may be wrong on this, but I am almost positive of my statement, they used the word “Wed-Lock” and we called their attention to it, and they immediately wrote back to us and told us they were sorry, they didn’t know that that was our property, or whatever the correct term to use, and they mentioned that they would stop using it and they apologized and said that there may be one or two ads that would appear with that name in it, because they had given out some mats to their [130] customers, and they would do everything they could to recall them.

Q. Now, other than that, Mr. Wineroth, you had never seen the word “Lock” incorporated in a trade-mark?

A. That is the only time I ever saw the word “Lock” connected with rings other than our own Wed Lok ring.

Q. That is the first time?

A. That is the first time.

Q. Now, are you familiar with the Kay Jewelry Company? A. I am.

Q. Will you tell us very briefly their size and proportion.

A. Well, the Kay Jewelry Company is a chain of jewelry stores with their offices—that is, their main offices are in Washington, D.C. I think they have about 200 retail stores throughout the United States.

(Testimony of Joseph Norman Wineroth.)

Q. How do they compare in size with other retail jewelers?

A. Well, there is no other group of jewelers or chain of jewelry stores that are equal in size.

Q. Now, do you recall that sometime during the middle part of 1948 that the Kay Jewelers came out with a diamond ring ensemble marked "Tru Lock," T-r-u L-o-c-k? A. I do.

Q. Do you recall that suit was brought against them for infringement of Wed Lok, a suit similar to this in Los Angeles? A. I do. [131]

Q. And do you recall that in that suit judgment was entered against the Kay Jewelry Company by consent that the word "Tru Lock"—they would be enjoined from using it in connection with this?

A. I remember that.

Mr. Mellin: May I offer in evidence a certified copy of the judgment in that suit, your Honor, and certified copy of complaint therein.

The Clerk: One exhibit?

Mr. Naylor: That is objectionable. I don't think that is germane to any issue in this case.

The Court: Neither do I.

Mr. Mellin: Pardon me?

The Court: The objection is made it is not germane. Counsel says he doesn't see how it is germane. I said, "Neither do I."

Mr. Mellin: Your Honor, that just goes to show that others—using their contention—a large jewelry concern using that trade-mark had acceded to the judgment it was infringement.

(Testimony of Joseph Norman Wineroth.)

The Court: Do you press your objection?

Mr. Naylor: Just one moment, your Honor. Withdraw the remark.

(Copy of complaint and judgment in Los Angeles action were received in evidence and marked Plaintiff's Exhibit TT.) [132]

Q. (By Mr. Mellin): Now, from your knowledge of the advertising that was done by jewelers during the years 1938, 1939 and 1940—and you have knowledge of the advertising by dealers during the years 1947 and 1948? A. I do.

Q. How would you say it compared in amount of advertising by dealers of the word "Wed Lok," from your knowledge?

A. Just repeat the question again?

Mr. Mellin: Will you read the question.

(Question read.)

Mr. Groner: Read the previous question.

Mr. Mellin: How did it compare in volume?

Mr. Naylor: How did what compare?

The Court: The question isn't clear to me.

Q. (By Mr. Mellin): The advertisement of Wed Lok by dealers in 1938, 1939 and 1940, any one year, as compared with either of the years 1947 and 1948.

A. Well, 1947 and 1948 were both greater than 1938.

Q. How much greater, to your knowledge?

A. I would say double—hundred per cent more.

(Testimony of Joseph Norman Wineroth.)

Q. How would it compare geographically?

A. Geographically it would be the same. We had the same distribution—I mean as far as dealers using our products are concerned, geographically it would be the same, the 48 States.

Mr. Mellin: That is all. Just one moment. There is one [133] thing I neglected. May I indulge?

Mr. Naylor: Yes, sir.

Q. (By Mr. Mellin): By the way, when Wed Lok rings are sent from your establishment to dealers, are they tagged in any fashion?

A. Yes, they are.

Q. I hand you a sheet on which is pasted a gold and platinum tab marked "Granat Wed Lok," an envelope marked "Wed Lok Rings by Granat," and ask you what they are and how they are used.

A. These tags are used on the rings. If it is a gold ring, we put on the gold ring tag, and the same thing would apply to platinum. This here mark with tissue paper is placed in this receptacle and then put in the envelopes and shipped to the customers.

Q. How long has that been the practice?

A. Well, ever since we got back into production in 1946.

Mr. Mellin: I offer that in evidence as next in order.

(Gold and platinum tabs received in evidence and marked Plaintiff's Exhibit UU.)

Q. (By Mr. Mellin): Now, one question, Mr.

(Testimony of Joseph Norman Wineroth.)

Wineroth: Have all the Wed Lok rings you have mentioned that you sold to your knowledge been stamped inside "Wed Lok"?

A. They have.

Q. I mean—you don't stamp all of them?

A. I don't stamp each one separately, but they are supposed to [134] be. That is the instructions.

Mr. Mellin: That is all.

Cross-Examination

By Mr. Naylor:

Q. Mr. Wineroth, on direct examination reference was made to this sheaf of invoices headed "Granat Manufacturing Company" for the years 1944 and into 1946. Will you examine them again. What company issued those invoices?

A. Well, these were issued by Granat Bros.

Q. What name does the invoice bear as heading?

A. Well——

Q. Just a minute. What name is borne by the heading of the invoices?

A. The heading of the invoices is called "Granat Manufacturing Company."

Q. And who is the debtor or the buyer shown on the invoices?

A. L. A. Giacobbi and Company.

Q. So that on the face of those invoices the seller and the buyer are one and the same, aren't they?

A. No.

Q. On the face of the invoices?

(Testimony of Joseph Norman Wineroth.)

A. No. If you will come here I will show you something. This is marked "Granat Manufacturing Company," address 2390 Mission Street. Now, the retail store and the factory was separated. We tried to keep our sales separate, so the factory billed us. That is in there; you will find "Granat Manufacturing [135] Company, 2390 Mission Street." We did that until we moved the factory to 114 Geary Street. It was a bookkeeping figure, is all. I think you will find that——

Q. What do you mean, "bookkeeping figure"? I don't follow you.

A. I don't mean a bookkeeping figure. It was done to simplify bookkeeping in the plant, to know what was billed dealers; and so forth.

Q. I still don't follow you, sir, on the matter of the invoices having Granat Manufacturing Company at the top and billing L. A. Giacobbi and Company.

A. Well, L. A. Giacobbi and Company is a corporation.

Q. But it uses the fictitious name and style of Granat Manufacturing Company?

A. That is correct.

Q. Isn't that a bill from the corporation to itself?

A. No, definitely not.

Q. I don't follow you.

A. I am sorry you can't.

Mr. Mellin: Can you explain it in detail?

The Witness: I can explain it.

Q. (By Mr. Naylor): I wish you would. I think the Court is confused, too.

(Testimony of Joseph Norman Wineroth.)

A. What was the question you want to know now?

Q. Isn't that an invoice from the corporation to itself? [136] A. No.

Q. Why not?

A. I just got through explaining to you this is Granat Manufacturing Company—this actually is Granat Bros.——

Q. Is that true of all those invoices?

A. All of these invoices? I don't know. I haven't checked them all, but I think it is. When the wholesale department of Granat Bros., when they bill out to us, they bill out under the name of Granat Manufacturing Company. They still bill us from Granat Manufacturing Company to L. A. Giacobbi and Company.

Mr. Mellin: Why?

The Witness: Frankly, I can't answer that.

Q. (By Mr. Naylor): Well, do these——

A. Frankly, I can't answer that.

Q. Are we to understand from the answer you have given that Granat Bros. also employ the name Granat Manufacturing Company as a fictitious name and style?

A. All I know is that in their wholesale department to the factory—or to the wholesale division they bill under the name of Granat Manufacturing Company.

Q. Do they make any other use of Granat Manufacturing Company?

(Testimony of Joseph Norman Wineroth.)

A. I couldn't answer that. I don't know what they do, I only know what we do.

Mr. Mellin: Who would know?

The Witness: I think Mr. Granat could answer that. I [137] think Mr. Quick would be able to give you a better answer than anybody. He is the comptroller.

Q. (By Mr. Naylor): Will you thumb through that collection of so-called invoices and state whether or not there is on the face of any of them—it will only take you a second—I am sure—any invoice in that collection other than one from Granat Manufacturing Company to L. A. Giaccobi Company?

A. If there is one invoice? What is that question?

Q. Are they all the same? That is all I want to know, as to the so-called seller and so-called buyer.

A. Oh, I think so—all those I examined so far are the same. Do you want me to go through them all?

Q. I have been through them. I couldn't find any. Are they all the same so far as the so-called seller and buyer?

A. Yes, I think so.

Q. Thank you. Now, on direct examination your attention was drawn to the topmost invoice and you referred to a design number, 3957-4RW, and I think you testified that was a style number, is that correct?

A. That is correct.

Q. Do you have a list of the various style numbers that have been sold by Granat Manufacturing Company under the trade-mark Wed Lok?

(Testimony of Joseph Norman Wineroth.)

A. I think I could give them to you.

Q. Could you supply us with such a list? [138]

A. I think so, yes.

Q. Could you do that by tomorrow morning do you think?

A. What time tomorrow morning?

Q. Any time during the morning session.

A. I think—that is pretty hard. If you give me a little more time—I would rather have more time.

Q. Any time during the course of this trial.

A. All right. What is it you want again?

Q. A list of style numbers which have been employed by Granat Manufacturing Company or Granat Bros. for rings which have been sold by either of them under the trade-mark Wed Lok.

A. I can give you that.

Q. Did you use such a list at the time these were prepared?

A. Sure.

Q. Would you have it in the company records?

A. I think I can find it for you.

Q. That is in the period——

A. In fact, if you want to know, I think I can even find you those Wed Lok rings—that is, a Nanette ring, if that is what you are driving at, that is a Nanette ring. That is the old ring right here. I will show you that number stamped on the die.

Q. I am not concerned with that. I would like to see the list of rings that were extant at the time these invoices were made up, for the period beginning January, 1944, and ending March, 1946.

(Testimony of Joseph Norman Wineroth.)

A. All right. [139]

Q. How many rings were checked off by you on the first invoice under the style number that was mentioned?

A. There were three.

Q. What is the total price?

A. \$4.60 apiece.

Q. What does that cover? That is a complete set of blanks, is it not?

A. The blank is \$4.60, yes.

Q. By the "blank" you mean the ensemble, do you not?

A. No, I don't.

Q. What do you mean?

A. I mean just the wedding ring.

Q. Just the wedding ring? A. Yes.

Q. Then the invoice 7470 did not relate to an ensemble?

A. In this particular instance it did not, no.

Q. Would you have any knowledge whether the wedding rings on invoice 7470 identified as 39574RW are marked with a trade-mark?

A. I can't answer that. I will tell you why: Sometimes we mark "Wed Lok" in the mounting, sometimes we mark it in the wedding ring. We don't mark it in both places. We put the trade-mark in one and the karat mark in one, and so forth. We don't put all the markings in one ring, because we wanted to leave some room for engraving on certain rings.

Q. On your deposition, sir, I asked you to produce records, [140] if any you had, from customers

(Testimony of Joseph Norman Wineroth.)

to Granat Manufacturing Company—by that I mean L. A. Giacobbi or Granat Manufacturing Company, whichever you choose to call it—ordering Wed Lok ensembles in the period 1940 to May of 1947. Are there any such records extant?

A. I don't think so, no.

Q. Then this particular group to which your counsel has referred do not represent orders coming from your customers, do they?

A. No, they don't represent—these represent goods that we have manufactured from the factory to us and we in turn sold them.

Q. Now, what I am concerned with is a record evidencing the sale of any Wed Lok ensembles between the years 1940 and May, 1947.

A. I don't have the evidence, but I think—we wouldn't have bought the rings unless we could sell them—we wouldn't have ordered them, rather.

Q. I presume from the production of these you have made a search——

A. I didn't have any records; you asked me for them and I didn't have them——

Q. Pardon me, Mr. Wineroth, let me finish my question. A. I am sorry, I apologize.

Q. I assume you made a very careful search for that which was [141] asked for on your deposition, namely, orders from the customers, and I assume from the fact that you have not now produced them that they are not extant? Is that a correct assumption? A. That is correct.

(Testimony of Joseph Norman Wineroth.)

Q. Did you personally participate in the selection of the witnesses who testified on behalf of this plaintiff in Portland, Oregon, Salem, Denver, Aurora, Illinois, Chicago, Illinois, Buffalo and Los Angeles?

A. Only to this extent, that we had a sales meeting here and I told our salesmen—we told our salesmen when they went out to interview any of our customers to acquaint them with the situation and if they found anybody that would—was able to give the information we wanted, we would like to have them send the names in.

Q. What information were you seeking?

A. What do you mean by that?

Q. What information were you seeking of these witnesses?

A. I wasn't seeking any information myself.

Q. What information was the plaintiff in this action seeking?

A. I think Mr. Mellin can answer that. I can't answer that.

Q. I thought you said you gave the instructions to the salesmen, didn't you?

A. I said if they found anybody that we could discuss this thing or take the depositions from—

Q. As to what? [142]

A. Well, frankly, to be truthful with you, I didn't do it myself, now that I recall it. We had somebody else do that.

Q. Who did? A. Mr. Hursh.

(Testimony of Joseph Norman Wineroth.)

Q. Mr. Hursh?

A. Yes. We called him over to the meeting, now that I recall it.

Q. Was the matter of the selection of persons who testified on the deposition junket to Portland, Salem, Denver, etc.—

A. On the what?

Mr. Naylor: Will you read the question.

(Question read.)

A. Truthfully—

Q. (By Mr. Naylor): I haven't finished the question.

A. Oh, pardon me.

Q. Was the selection of those witnesses left to your counsel?

A. Oh, yes.

Q. Have you read the depositions of the witnesses who testified in those places?

A. No, I haven't.

Q. Have you been told as to what they testified?

A. Some parts of their depositions, yes, just here and there.

Q. I think it is a fair statement of the depositions of those persons in the places I have named, commencing with Portland and ending in Los Angeles, to say that without exception they [143] testified they were unable to procure Wed Lok rings during the war period. Are you well acquainted with Mr. Jacob of Portland?

A. I am very well acquainted with him.

Q. How often did you see him during the war?

A. At least once a year.

(Testimony of Joseph Norman Wineroth.)

Q. He personally came down on numerous occasions, did he not, concerning his purchases from Granat Manufacturing Company?

A. Well, yes, of course.

Q. And you saw him on several different occasions during that period?

A. I saw him every time he came down.

Q. Were you ever able to deliver Wed Lok rings to him during the wartime period?

A. I think he would have got his share of Wed Lok rings, yes.

Q. He testified he couldn't get them.

A. Well, I don't know what he testified, but whatever we had he got. I can't just lay my fingers on it to say—I mean by saying that he got whatever we had, he got his share of the merchandise we were able to sell at the time.

The Court: Are you certain he got some?

A. I am positive, sir, because he is a very good customer and we gave him whatever we could.

Q. (By Mr. Naylor): I want to read you a little of his testimony and ascertain whether you will say it is a correct statement [144] or incorrect statement; at page 43, under cross-examination Mr. Jacob was asked as follows: "Now, I think you mentioned that during the war years Granat Bros. weren't making Wed Loks, is that your testimony?" His answer was, "Yes—pardon me, as far as I know. At least, they might have been making them, but we were unable to purchase any from them—at

(Testimony of Joseph Norman Wineroth.)

least, I wasn't able to purchase any from them. Whether they were making them or not, I can't tell."

Would you say that is a correct statement?

A. Well, frankly, I don't think Mr. Jacob is informed. I will tell you what happened there. I can show you these rings here—now, we brought out the Nanette Wed Lok, but as soon as the war came out we discontinued the practice of promotions of any kind. When I say "promotions" now, I am speaking about promoting names or calling them anything. We just sold merchandise. I can show you—I know he got a certain amount of this merchandise.

Q. I want to read you further, Mr. Wineroth.

A. Go ahead.

Q. "Q. In any event, you weren't able to place an order and receive the goods"? And he testified, "A. I wasn't able to order anything from them. I used to go down and get what I could from them or they sent me whatever they had whether I ordered it or not."

A. That is correct.

Q. Is that a correct statement? [145]

A. Yes. [145-A]

Wednesday, March 16, 1949—10:00 A.M.

The Clerk: Granat Bros. v. Friend and Granat Bros. v. Brown and Feature Ring Co.

Mr. Naylor: Ready, your Honor.

(Testimony of Joseph Norman Wineroth.)

Mr. Mellin: Ready, your Honor.

JOSEPH NORMAN WINEROTH

resumed.

Cross-Examination
(Continued)

By Mr. Naylor:

Q. Mr. Wineroth, yesterday we were speaking at the close of the court session about the testimony of the Granat Manufacturing Company customers concerning their inability to procure Wed Loks during the wartime period; and as I recall your testimony, it was to the effect that you had not read the depositions of these various customers whose testimony was taken on behalf of the plaintiff?

A. That is correct, sir. I glanced at it. I didn't read them thoroughly. That is, all through them.

Q. Did you happen to glance at the deposition of Mr. Philip Kleiger, of Denver?

A. No, I didn't.

Q. I find that at page 32 of his deposition, Mr. Kleiger testified as follows:

“Q. What was the wartime period during which you could not purchase the Wed Lok rings? [146]

A. I would say around 1941 and thereabouts.

Q. And that ran approximately to May, 1947, did it not?

A. Until the last Wed Loks came through.

Q. To refresh your recollection on that, I note

(Testimony of Joseph Norman Wineroth.)

that your first advertisement of Wed Lok rings after the war appears to have been Plaintiff's Exhibit 4"—referring, your Honor, to the exhibit on that deposition—

“—August 4, 1947. Would that be about the time? A. The first which?

Q. The first radio advertisement of Wed Lok rings.

A. Well, I don't know as to the dates. I didn't follow that.

Q. Well, I take it that you were unable to find an earlier radio script than August 4, 1947, is that correct?

A. That I don't know, because there were changes in advertising agencies before these people took over, and that I can't say.”

Would you say his testimony was correct or incorrect as to his inability to get Wed Loks?

A. Well, Mr. Naylor, I don't know just how he pointed that out, but I think I pointed out that this whole thing here, that in the war years we produced practically very little Wed Loks, and I don't know whether he got one or two sets or what. But with [147] the amount of customers we had throughout the United States, it is very difficult for me to say who got this or who got that. Whether he got one or not, I don't know. But I do know, and I think that we have bills to show and we have production figures to show, that we produced these Wed Lok rings, and just where they went, I don't know.

(Testimony of Joseph Norman Wineroth.)

Q. Your testimony was, however, Mr. Wineroth, that you don't have those records, isn't that a fact?

A. I beg your pardon. I have them right here, sir (indicating).

Q. No, I think you are speaking of intercompany invoices, aren't you?

A. That is what I am speaking of.

Q. From Granat Manufacturing Company to itself, identified as L. A. Giacobbi?

A. Say that again, please.

You are speaking of this stack of invoices, aren't you? A. Yes.

Q. The intercompany invoices?

A. That is correct.

Q. From Granat Manufacturing Company to L. A. Giacobbi? A. That is correct.

Q. I am speaking about orders from customers.

A. Oh, we don't keep our orders that long. I would have to have a warehouse to keep all our correspondence and orders that far back. [148]

Q. Now, did you happen to glance at the testimony of Mr. Goldblatt, taken on behalf of the plaintiff? A. No, I didn't.

Q. I want to acquaint you with the fact that at pages 26 and 27 Mr. Goldblatt in his deposition testified as follows:

"Q. When was it after the war years that the merchandise under 'Wed Lok' was first available to you?

A. About three years ago at this time.

(Testimony of Joseph Norman Wineroth.)

Q. Would you fix the date? Can you fix a date on that for us?

A. As to the exact month, you mean?

Q. Approximately.

A. Oh, I would say it would possibly be in February or March of 1946. Young Giacobbi came up with it on that trip from San Francisco.

Q. Did you place an order with him at that time? A. No, sir.

Q. When did you first place your order after the war years?

A. Around a year after that.

Q. And that would be approximately when in 1947?

A. I think our first shipment of Wed Loks came in about April or May of 1947."

Would you say that Mr. Goldblatt was in error in so testifying? [149]

A. Well, I am not in a position to say whether he is right or wrong; I don't know.

Q. Did you examine the testimony of Mr. Gambler, taken at Buffalo, New York, on plaintiff's behalf? A. No, I didn't.

Q. His testimony at pages 5 and 6 was to this effect:

"Q. How long have you been selling Wed Lok rings in your store?

A. I can't remember. I have to look up the ad."

Then there is a parenthetical expression, "(Looking at papers)".

(Testimony of Joseph Norman Wineroth.)

“I think we have an announcement here. I think it is September. The first ad, I believe, came out September 3, 1947.”

Would you say that is about correct?

A. Well, if he said so. How would I know whether it is correct?

Q. You are acquainted with Mr. Shapiro, who testified here, are you not? A. I am.

Q. Has it been Mr. Shapiro's practice to come to see you in San Francisco?

A. He has visited me here, yes.

Q. And you have visited him in Los Angeles, have you not? A. Yes, sir.

Q. Yesterday we asked, Mr. Wineroth, if you would make an [150] attempt to supply us with a list of the catalog numbers which have been employed by plaintiff and Granat Manufacturing Company. Have you been able to do that?

A. Well, that list is being made up now, and within the next thirty minutes or so I believe it will be here in court.

Q. Were you present yesterday when Mr. Joseph Granat was testifying concerning the trade-marks of the company listed in “Trade-Marks of the Jewelry and Kindred Trades”?

A. I was, sir.

Q. Were you present when he said that the matter of listing or supplying the statement would be the wholesale end of it? A. I was.

(Testimony of Joseph Norman Wineroth.)

Q. And by that he was referring to Granat Manufacturing Company, was he not?

A. I think so.

Q. I am going to call your attention, or, rather, I am going to call your attention to the volume, Fifth Edition, "Trade-Marks of Jewelry and Kindred Trades," and I will direct your attention to page 50 of that publication (handing to witness). Do you see there the listing of Granat trade-marks?

A. Yes.

Q. Did you supply that publication with the list which appears there?

A. Truthfully, I can't answer that question.

Q. Do you know who would have done it? [151]

A. No, I don't. I will tell you, this thing—I don't know. I mean——

Q. Do you find in that list the trade-mark "Wed Lok"?

A. No, I don't.

Q. What marks do you find?

A. Buttercup, Coronet, Finger Bracelet, Hobby Bracelet, Parisian Knot, Rounded Square.

Q. Were those marks actively in use by the plaintiff in this action during the wartime period?

A. I can't answer that either.

Q. You don't know? A. No.

Q. Well, do you know whether you were selling any goods for Granat Bros. under the marks listed in that publication during the wartime period?

A. We were not selling any of this, no. With one exception there, that Stagger set thing there,

(Testimony of Joseph Norman Wineroth.)

at the top—those are trade names that are used in retail advertising, and as far as—this is not any official trade-mark book. This is a commercial thing that, unless you advertise in it, they won't put your trade-mark in there.

Q. Well, would you say Mr. Granat was in error in testifying? A. I don't know.

Q. Just a moment, sir. Would you say that Mr. Granat was in error yesterday when he testified that the wholesale end of the [152] business would be concerned with this listing?

A. We would be concerned with it, but if they sent me a letter asking me to subscribe to an ad, I might just tear the letter up and throw it away. We get that sort of thing all the time. That is no official book of any kind.

Q. You don't know who in your organization would have caused the entry to be made in the book?

A. Truthfully, I can't. We had several—I had a partner at that time. I may have been on the road, he may have sent it in. I don't know. That book is not as important an issue——

Q. Now, yesterday under direct examination you referred to Exhibits Z and AA, Z being entitled "Wed Lok dealers sold directly by Granat Manufacturing Company during the period 1934 to 1941" (handing to witness). What is meant by the expression "Wed Lok dealers" as there used?

(Testimony of Joseph Norman Wineroth.)

A. They were retail customers who are customers that we sold directly to.

Q. Are they customers of your dealing solely in Wed Lok rings?

A. I wouldn't say solely Wed Lok rings. They are dealers in all our products.

Q. Well, the term then is a misnomer, is it?

A. Well, now, that might have been—we assume that anybody that buys our products are going to buy Wed Lok rings. They buy Wed Lok rings.

Q. The proper caption for that would be "Customers of Granat [153] Manufacturing Company," wouldn't it?

A. Well, now, I am not going to answer that question. I mean, I am not a judge of that. I would say you are correct in that, yes.

Q. You would say I am correct?

A. I would say you are correct and you are incorrect.

Q. What about AA, which is entitled "Wed Lok Dealers during the Year 1947"?

A. Well, the same thing applies to that.

Q. The same thing applies?

A. The same thing applies. The one is——

Q. They were not customers of yours handling nothing but Wed Loks, were they, in these two lists?

A. Just handling nothing but Wed Loks?

Q. Yes, sir.

A. In other words, if I have a customer that

(Testimony of Joseph Norman Wineroth.)

buys certain Wed Loks and buys something else, then I can't call him a customer? Is that what you are trying to drive at?

Q. No, I am inquiring this: Is there any person listed in either Plaintiff's Exhibit Z or AA who dealt in Wed Lok rings alone?

A. There are customers in those lists that just dealt in Wed Lok rings, yes.

Q. How many of them?

A. I couldn't tell you that. [154]

Q. You couldn't segregate them, could you?

A. With two or three weeks work perhaps I could, by going through all our records.

Q. Well, to boil it down, what Z and AA actually represent are customers of yours who handle the various products offered for sale by Granat Manufacturing Company?

A. That is correct.

Q. Including Wed Loks?

A. That is correct.

Q. That is a correct paraphrase of it, isn't that correct? A. Yes, that would be correct.

Mr. Mellin: Mr. Naylor, may I ask one thing?

Is the word "dealer" in your business, in this sense, used synonymously with "customer"?

The Witness: Yes, it is.

Q. (By Mr. Naylor): Now, yesterday you testified concerning the sales by Granat Manufacturing Company in the years 1935 and '36; and you then

(Testimony of Joseph Norman Wineroth.)

carried that forward to 1941, and you gave us certain totals? A. Yes.

Q. And I think you then said that 25 per cent of those several totals we cited, which were cited by you, represented the sale of Wed Lok ensembles, is that correct? A. That was correct.

Q. It is a fact, is it not, that when Mr. Granat discovered [155] that Strauss & Strauss had a Federal registration of the trade-mark "Wed Lok," there was an interruption in his use in 1935 and 1936 of that trade-mark name, wasn't there?

A. There was an interruption in—he is speaking—I think Mr. Granat was speaking of retail now, Mr. Naylor; he was speaking of the ads that we would use in the papers. We were speaking of advertising; we didn't stop the sale of the rings.

Q. Well, wasn't your testimony and Mr. Granat's testimony, too, on the discovery depositions that the reason for withdrawing "Wed Lok" was to determine what the rights were that Mr. Strauss had, so that Mr. Granat wouldn't be left in the position of an infringer of these rights? Isn't that correct?

A. Mr. Naylor, we withdrew the advertising, not the sale.

Q. Oh, but you withdrew the ads and kept on with the sales?

A. Naturally. There is nothing wrong with that.

Q. Well, now, in that particular period didn't we determine on the discovery depositions that the

(Testimony of Joseph Norman Wineroth.)

trade-mark "Wedded" was employed and that the trade-mark "Interlocking" was also employed in the period of non-use pending the determination of what rights Mr. Strauss had?

A. We may have changed our type of advertising. I assure you that when we found that they had the "Wed Lok" we discontinued advertising, but we didn't discontinue the selling of the rings.

Q. You didn't? A. No. [156]

Q. Well, under what name were they sold?

A. Well, they were just sold as rings. We still sell rings. We just sell them, that is all. It doesn't make any difference what we call them.

Q. In other words——

A. We are speaking of advertising now.

Q. No, I am speaking of the use of the trade-mark "Wed Lok" in the period following the discovery that Mr. Strauss had a Federal registration of "Wed Lok." That is the period I am speaking of. - A. Yes.

Q. As I understand you now, your testimony is that you discontinued the advertising of the mark, of the goods under the Wed Lok mark?

A. That is correct.

Q. But you continued to sell the rings. Now, how were the rings marked?

A. Well, Mr. Naylor, you are going back a long time, and you are asking me something that it is awfully difficult for me to answer now in the way

(Testimony of Joseph Norman Wineroth.)

you want me to answer it. Now, just what happened during that period, you are going back to '35, '36—I know that we continued to sell them. They may have been stamped different. We may have left the trade-mark out during that period. But I can tell you that we continued to sell the rings.

Q. You are not sure, however, how they were marked? [157]

A. No, I am not, Mr. Naylor.

Q. I would like to read just one answer you gave on the discovery deposition, at page 170, concerning this one particular incident:

“Q. That is a matter which would have come to your attention at that time, though, isn't it?

A. No, it wouldn't. At that time I was more or less on the road. As I mentioned before, Mr. E. A. Giaccobi was handling the executive work in our business, and I was doing more of the selling, and I didn't pay too much attention at that time, going back that many years. I do remember, however, that one time Mr. Granat told me that some other firm,—and I believe since my mind has been refreshed on it, it was Strauss & Strauss—that owned the name 'Wed Lok', and that he wanted to be very careful about using 'Wed Lok' until such time as he felt that he wouldn't be infringing on someone else's rights, and I believe he discontinued the use of it until he could get the matter straightened out.”

(Testimony of Joseph Norman Wineroth.)

That is correct, isn't it? A. Yes, sir.

Q. Now, with that testimony in mind, the figures given for the years '35 and '36 would stand some amendment, would they not?

Mr. Mellin: Just a moment now. May I have it pointed out [158] to this witness that that trademark of Strauss & Strauss was purchased in March of 1936, so don't—and I had him testify as to the year '36 and not as to '35, as I recall it. He had a different answer for '34 and '35.

Mr. Naylor: What was his answer for '34 and '35?

Mr. Mellin: You have the record. You are examining him, not me. But don't mislead the witness.

Mr. Naylor: I am not attempting to mislead him. I am trying to get at the facts.

Q. In '35, to March of '36, as Mr. Mellin suggests, what would your figures be for sales of Wed Lok rings? A. In '35?

Q. Now, I am speaking of rings sold under that name "Wed Lok."

A. Well, now, I don't have the figures for '35. My figures here only go back as far as '36.

Q. Could you ascertain the figures?

A. I really don't know right now. I don't know whether we have those figures or not.

Q. But you did have them for '36?

A. I have them for '36, yes.

Mr. Mellin: Where did you get those figures, Mr. Wineroth?

(Testimony of Joseph Norman Wineroth.)

The Witness: We got those from our books.

Q. (By Mr. Naylor): Do you have the books that would reflect the 1935 figures?

A. I asked our bookkeeping department to go back as far as they [159] could, and this is what they came back with. I wanted our total sales for as far back as we could go. In fact, I know now I asked them to go back as far as '34, because I knew we had started Wed Lok in '34—that is, advertising them. And I believe this is as far back as we have them, 1936.

Q. Now, yesterday you gave certain figures for the period from June 1946 to June of 1947. Now, what were those figures? What would they cover, Mr. Wineroth?

A. That would have covered all of our volume of business.

Q. The total volume of business?

A. That is correct, sir.

Q. And the figure you gave was \$1,848,194.42?

A. That is correct, sir.

Q. That is correct according to the memorandum you hold? A. Yes.

Q. And what percentage of that total volume would have been Wed Lok rings, so marked?

A. Well, when we get back—I would say that 50 per cent of our sales have been in Wed Lok rings in our total volume since 1947. I wouldn't say as to '46, however. I don't recall. But when we got back in production after the war, that is.

(Testimony of Joseph Norman Wineroth.)

Q. May I interrupt you? When did you get back into production?

A. Oh, in '46 or '47. I don't know just when.

Q. You don't know when?

A. I can find these things out for you. I mean, if there is [160] any question——

Q. Isn't it a fact that the announcement of the resumption was made in May of 1947?

A. I believe it was, yes.

Q. Isn't there an ad that so states?

A. I believe so.

Q. Isn't it the fact that some of your customers who testified by way of deposition supplemented the ad which was introduced in the San Francisco depositions, to show May 1947, as the resumption date?

A. Well, we were making the rings prior to that, but that is when our advertising campaign came out.

Q. But were you selling them?

A. Sure we were selling them.

Q. Prior to May, 1947?

A. I think so, Wed Loks. We have never stopped selling Wed Loks.

Q. I realize you have so testified, but I am speaking of the resumption after the war. I am trying to get at when was the resumption after the war.

Mr. Mellin: Well, if they never stopped, how could they resume?

(Testimony of Joseph Norman Wineroth.)

The Witness: Well, we never stopped.

Q. (By Mr. Naylor): Resumption of your so-called full-scale production; that is a very simple question. [161] A. Yes, it is.

Q. Now, when was it?

A. I don't know the particular month or day. But when the war was over, why, the men came back and we went into a fuller production. We sent salesmen out. We sent salesmen out as soon as it was advisable to do so. That has nothing to do with our advertising. I mean, we may have sold—we could sell goods without advertising, as far as that goes. [161-A]

Q. Are you saying that advertising doesn't mean anything?

A. No, I don't, I didn't mean it that way. I meant that you can sell merchandise without the advertising.

Q. Will you take a look at defendant's exhibit 22 on the San Francisco depositions and read the caption of that ad in the record?

A. "Announcing Wed Lok ensembles"?

Q. Yes. What else does it say in the caption, if anything? Now will you read the date? I think you will find it expressed at the extreme top.

A. I am sorry, but I can't read it.

Q. Maybe I can help you.

A. I wish you would.

Q. Isn't it May 18, 1947?

A. I don't have my glasses, I am sorry. I use

(Testimony of Joseph Norman Wineroth.)

reading glasses. All right, I will take your word for it.

Q. Thank you. Would it not be the practice in the jewelry trade to publish an ad of that description, referring to Plaintiff's Exhibit 22 on the San Francisco depositions, "Incidentally with the introduction of the article referred to in the ad"?

A. No, not necessarily, Mr. Naylor. Sometimes you may have an article selling it for two years before coming out on a campaign on it. That doesn't mean anything.

Q. Would it be called an announcement?

A. Yes, sir. [162]

Q. —Under those circumstances?

A. Oh, absolutely.

Q. It is a fact, is it not, Mr. Wineroth, that the period June 1946 to June 1947 ended within two weeks after the announcement contained in the ad I have just showed you, namely Plaintiff's Exhibit 22 on the San Francisco depositions?

A. That is correct.

Q. Are we to understand that the 50 per cent figure that you gave for that period, June 1946 to June 1947, was made in the last two weeks' period of that period pertaining to Wed Lok?

A. I don't know why you put it that way. Why should you say it was made in the last two weeks' period?

Q. Well, we have the announcement, have we not?

(Testimony of Joseph Norman Wineroth.)

A. I told you we were selling the rings. I didn't tell you we held the selling of the rings back by waiting the announcement. The manufacturer can do this, Mr. Naylor, you can go out and sell a million dollars' worth of merchandise before you put an ad in.

Q. What would be a normal practice under those circumstances?

A. The normal practice is just that, sir. I mean a man is in business, he has to sell merchandise, and he may go out and sell a considerable amount before he does any advertising on it at all.

Q. Did you supply mats like the ad in plaintiff's 22 on the San Francisco deposition— [162]

A. I would like to see it.

Q. Just a moment, sir—on the San Francisco deposition to any of your retail customers?

A. Did we supply mats like this?

Q. Yes.

A. We didn't supply mats, we supplied what we call a glossy proof.

Q. And the purpose of the glossy proof would be so they in turn could have a mat prepared from it, wouldn't it? A. Yes.

The Court: I understood you yesterday to say that the 50 per cent figure applied both to the year June 1946 to June 1947 and the year June 1947 to June 1948, and did I correctly understand you a few minutes ago to say that figure of 50 per cent does not pertain to the year 1946 to 1947?

(Testimony of Joseph Norman Wineroth.)

A. No, I didn't say that, your Honor; I said it did pertain to it—if I understand your question.

Q. A few minutes ago I thought you said that figure didn't apply to the first year.

A. It does apply. In other words, Mr. Naylor was trying to point out we did that in two weeks. He seems to be of the opinion we stopped selling Wed Lok entirely. The thing he doesn't understand, which I am trying to make clear to him, is that we sell complete diamond rings, and that is why the figures—that is why 50 per cent——[164]

Q. Now I am to understand that the 50 per cent figure applies to your gross sales for that year, June 1946 to June 1947?

A. That is correct.

Q. All right.

Q. (By Mr. Naylor): That 50 per cent represents Wed Loks?

A. That is correct.

Mr. Naylor: I have just one or two more questions. I would like to take just a minute, if your Honor will bear with me. I think that is all, your Honor.

Mr. Mellin: If your Honor please, I have just been handed all of the serial numbers or whatever they are called, of all of the Wed Lok rings used by Granat, which I would like to hand to counsel (handing document to Mr. Naylor).

Mr. Naylor: Thank you, sir.

Q. I think you are familiar with this or have you seen it?

A. I asked to have it made up, Mr. Naylor.

(Testimony of Joseph Norman Wineroth.)

Q. That is a list that is currently made up, is it not?

A. Just made up, yes.

Q. That isn't the list that was actually referred to in the business of Granat Manufacturing Co. for the period that we spoke of yesterday?

A. I don't understand your question. You asked me yesterday to produce a list of all the Wed Lok numbers. That is the list I asked for.

Q. I think it was also qualified as to the list that was extant [165] at the time we were talking about, wasn't it?

Mr. Naylor: I don't think it is of any importance. We will let it go.

Redirect Examination

By Mr. Mellin:

Q. Now with respect to the list—just a minute——

A. Oh, pardon me.

Q. With respect to the list that you have in your hand, does that correctly, as far as you know, give the serial numbers or the numbers that we were talking about yesterday for Wed Lok rings throughout the entire period 1934 to date?

A. Well, as near as I can——

Q. Do you recognize any——

A. I recognize them all—I won't say all, but I recognize most of them. These are design numbers of Wed Lok rings that we have made.

Q. And once the number is given to a ring of a particular design, does it ever change for that design?

(Testimony of Joseph Norman Wineroth.)

A. No, it is never changed for that design.

Q. Now, the numbers on the list, do they correspond with the numbers we checked off on these invoices?

A. I haven't checked them, but I feel confident——

Q. I will let you have it, and tell me whether the numbers checked off here as Wed Lok conform to the serial numbers on the list you have. [166]

Mr. Groner: May it please your Honor, I dislike to interpose objections to questions of this sort, but obviously this list made yesterday could be made to conform and it isn't probative of the fact that the numbers in the earlier period are actually numbers of Wed Loks. A. Mr. Groner——

Mr. Mellin: Just a moment, he is addressing the court.

The Court: Overruled.

The Witness: I mean if there is any question——

Q. (By Mr. Mellin): Just confine yourself to the answer. A. What was the answer?

Q. Would you tell me whether the serial numbers or design numbers, whatever you call them, in these invoices, and which you said yesterday were Wed Lok rings sold during the years 1944, 1945, 1946 and 1947, correspond with the design numbers shown by the list to be adopted for Wed Lok rings.

A. They do.

Q. You know that?

(Testimony of Joseph Norman Wineroth.)

A. I know it. There is no question about it.

Q. You checked them last night, as a matter of fact?

A. Yes, sir.

Mr. Groner: May I offer that in evidence, your Honor, as Plaintiff's exhibit next in order?

(List of Wed Lok numbers referred to was thereupon received in evidence and marked Plaintiff's Exhibit VV.) [167]

Q. (By Mr. Mellin): Now what happens when—what has preceded, if anything, the receipt of an invoice such as I have in my hand that is the question in controversy—that is a bill to Giaccobi for merchandise already received, is it?

A. Oh, yes, it accompanies the merchandise as it comes out of the factory.

Q. It accompanies the merchandise?

A. Yes, sir, accompanies the merchandise.

Q. Now during the war years, would you order any of that material and keep it in inventory for any period of time?

A. During the war years?

Q. Yes.

A. We tried to keep an inventory but there was no such—you couldn't keep an inventory of rings.

Q. So would it be reasonable to assume, then, that any merchandise received from Granat Bros. would be sold, say, within a period of 30 days and delivered?

A. It would be.

Q. I show you a photostatic copy of a tear

(Testimony of Joseph Norman Wineroth.)
sheet of San Francisco Examiner for April 25, 1943, a Wed Lok ad displaying rings. Will you tell us what rings those are, please? Identify them by Granat name and number, series name and number.

A. This is Wed Lok Nanette series.

Q. Does that correspond or not in number with any of the serial numbers which appear in these invoices which we have been discussing? [168]

A. You will find these rings will be listed in that.

Q. And do you recall the number offhand? To refresh your recollection——

A. Yes, I can.

Q. ——I will hand you the invoices.

A. This would be 8148, line 4.

Q. What does the 4 indicate?

A. That would indicate the amount of small diamonds decorating——

Q. That would be 4 small diamonds?

A. 4 small diamonds.

Q. If there is a "2" behind it?

A. It would be a line 2.

Q. So the first four numbers indicate the design number?

A. The design number, that is right, and the wedding ring number—do you want the wedding ring number?

Q. Yes, if you would. In other words, there are two series of numbers for a set, isn't that so?

A. I believe it is 404795 would be the wedding ring number.

(Testimony of Joseph Norman Wineroth.)

Q. And the 5 would indicate 5 diamonds?

A. 5 diamonds in the wedding ring.

Q. Does that number also indicate by a change in the number whether it is gold, platinum or—

A. The last, the mounting ends with a 2 and the wedding ring ends with a 7 in gold, and when we make it platinum we end the [169] number with a 1, showing it is a platinum mounting, and 2 would show it is a platinum ring.

Q. By the way, in these exhibits A to E, is there a ring there that corresponds to the ring in this ad of April 25, 1943?

A. I am pretty sure there is a Nanette set there.

Q. I am sorry, I don't know which one (handing exhibits to witness).

A. Here is your Nanette set.

Q. And that is Exhibit what, Mr. Wineroth?

A. Wait a minute now—this is the 2 mounting. This is the same pattern that appears on that ad, the same Nanette ring but this is 2 mounted Nanette.

Q. That means 2 diamonds, one in each side instead of two at each side?

A. That is exactly the same ring, shank and all, and the same series, but it has only 2 mounting.

Q. That is the same number except with a "2"?

A. No, in this—this is 8038. This has the 2 mounting in it. I can give you that ring, though, if you want to see it.

(Testimony of Joseph Norman Wineroth.)

Mr. Mellin: May I offer that ad that I produced in evidence, your Honor, as explanatory to the witness' testimony as next in order?

(Advertisement in Examiner April 25, 1943, was thereupon received in evidence and marked Plaintiff's Exhibit WW.)

Mr. Groner: Do you know if this is already in evidence? [170]

Mr. Mellin: I would like to have it separate because there is a big bundle——

Mr. Groner: All right, if you let the record show that.

Mr. Mellin: Let the record show it is a part of another exhibit.

Q. Now have you seen any Feature Lock ads of customers of Feature Lock? A. Oh, yes.

Q. Will you state whether or not any of those ads give the name of the manufacturer on them that you have noticed, by customers?

A. I don't think they do. I have never seen any.

Q. And by the way, I asked you yesterday about advertising and I neglected to ask you whether or not the Granat Manufacturing Co. did anything on the radio advertisement of Wed Lok?

A. We didn't do any radio announcing ourselves, or buy any time, but we supplied this radio script.

Q. And who did you supply that to?

(Testimony of Joseph Norman Wineroth.)

A. We supplied those to our customers who requested them from our salesmen.

Q. When was that done?

A. Well, that—we did that in 1948—I believe 1947 and 1948 when it came out.

Q. I hand you what is labeled “12 fresh new radio announcements Wed Lok ensembles”, and I note on there in handwriting there was a thousand sent to dealers. Would you tell us about that, [171] please? Were such scripts actually sent to dealers, and a thousand of them? A. Oh, absolutely.

Mr. Mellin: May I offer that in evidence as the next in order, your Honor?

(Radio announcements of Wed Lok ensembles referred to above was thereupon received in evidence and marked Plaintiff's Exhibit XX.)

Q. (By Mr. Mellin:) You say that was during the years 1947 and 1948?

A. 1948, yes. We have a new one now.

Q. Now with respect to the names counsel asked you about, “Wedded” and “Interlocked,” did they indicate a brand name or a series name as you distinguished yesterday?

A. That was a series name.

Q. Both of them?

A. Wed Lok is our brand name and that is a series name.

Q. Now, Mr. Wineroth, you through your con-

(Testimony of Joseph Norman Wineroth.)
nection with the jewelry business, are you familiar with the difference—broadly the different methods of making rings? That is, the difference——

A. Oh, I am familiar with most of them, yes.

Q. By what process are the Granat rings manufactured?

A. Well, we make what is termed a tool made ring. In other words, it is a ring that is made out by tools up to the mounting, and then the balance is fashioned by hand? [172]

Q. When you say “made by tools” you mean in form like a forging?

A. That is, forged, trip hammers and presses; you get the parts, you get impressions from that, and then you trim it, a certain amount of trimming and a certain amount of hand piercing with swords and so forth, to fashion the ring.

Q. Is there another method known as a casting ring? A. That is right.

Q. And that process is something like, as I understand it, a dentist’s casting for your teeth?

A. That is correct.

Q. Do you know what the general opinion in the jewelry trade is as to the relative qualities between a hand tooled ring and a cast ring?

A. Well, it is a generally accepted fact throughout the industry that a tool made ring is a far superior ring to a cast ring.

Q. In other words, it is finer merchandise, finer jewelry?

(Testimony of Joseph Norman Wineroth.)

A. There is no question about that at all.

Q. Now you were asked about customer orders during the war. Did you take any orders at all during the war and if you did or did not, will you explain it just as briefly as you can to us and the reasons?

A. Well, we discouraged the sending of any particular orders for particular merchandise. We suggested what we call an open order. In other words, give us some idea of how many rings you would like and what price line, and let us send them to you, because if you order a certain ring and we don't have it, it is going to hold up your order. We had this limited production. It was agreeable to all our accounts, they cooperated, and we asked them to take just what we produced. That is why we discouraged the orders for particular merchandise. However, in certain instances if a customer wrote us and told us they had to have a particular design of wedding ring to match a mounting, we would do all we could. In fact, we did turn them out, but we didn't encourage any particular design orders. We wanted open orders.

Mr. Mellin: That is all.

Recross Examination

By Mr. Naylor:

Q. On your redirect you testified that the names "Wedded" and "Interlocking" were merely series names?

A. Yes.

Q. As distinguished from trademarks?

(Testimony of Joseph Norman Wineroth.)

A. Yes.

Q. I would like to show you an advertisement which was offered on the San Francisco deposition at 34, and I will ask you to read the caption on that particular advertisement.

Mr. Mellin: What is the date, Mr. Naylor?

Mr. Groner: January 11, 1946.

A. This says, "Wedded rings." I don't see the date. Where is it?

Q. (By Mr. Naylor): What appears directly under the word [174] "Wedded"?

A. "Trademark", I believe it says.

Q. Now does the word "Wed Lok" appear in that advertisement? A. No.

Q. Now will you examine 35, the very next page in that binder, and read the caption on that ad?

A. "Another new series of interlocking ensembles in platinum".

Q. What word appears in immediate juxtaposition to the word "interlocking"?

A. "Ensembles in platinum".

Q. What is the word in small type directly under the word "interlocking"?

A. It says, "trademark".

Q. Does the word "Wed Lok" appear in that advertisement? A. No, it doesn't.

Q. And what is the date of that ad?

A. March 1, 1936.

Mr. Naylor: That is all.

(Testimony of Joseph Norman Wineroth.)

Further Redirect Examination

By Mr. Mellin:

Q. Those marks that you just mentioned—those were retail ads, by the way?

A. They are retail ads.

Q. Those were the ads that were put in by deleting “Wed Lok” during the interim of purchasing the Wed Lok registration from Strauss? [175]

A. Well, I am not positive of that, but I imagine so, Mr. Mellin.

Mr. Mellin: That is all.

Mr. Naylor: That is all.

* * *

FORREST RALPH QUICK

called on behalf of the plaintiff, sworn.

Direct Examination

* * *

Q. What is your name, age and address, Mr. Quick?

A. Forrest Ralph Quick, age 52, 2390 Van Ness Ave., San Francisco.

Q. And what is your occupation?

A. Controller, Granat Bros.

Q. And that is the plaintiff here?

A. Yes, sir.

Q. How long have you been controller for Granat Bros.? [178]

A. Since October 1945.

Q. And are all of the records of Granat Bros., including their books, under your control?

A. Yes, sir.

(Testimony of Forrest Ralph Quick.)

Q. And in what condition were those books when you arrived there, or the records?

A. Well, they were not all there. They had been thrown away over a period of years. So that I could find some, and others I can't.

Q. Some in storage and some disposed of?

A. That's right.

Q. Did they have any methodical way of keeping books? A. No, sir.

Q. Other than income and outgo?

A. That's right.

Q. You are familiar, are you, with the transactions and the method of transacting business between Granat Bros. and the Granat Manufacturing Co., used synonymously with the L. A. Giaccobi Co.? A. That's right.

Q. I hand you a series of invoices and call your attention to the fact that they are made on the letterhead of billhead which says, "Granat Manufacturing Co.", and I ask you if you are familiar with those invoices.

* * *

Q. (By Mr. Mellin): How does it happen, Mr. Quick, if you know, will you tell us the reasons why those heads say, give the address of the factory of Granat Bros. in typing and then say "Granat Manufacturing Co."? Will you tell us, please, briefly.

A. Yes, the practice is to divide our retail from wholesale business, so there will be no chance of making mistakes in allocation of invoices.

Q. In other words, you would reach that effect

(Testimony of Forrest Ralph Quick.)

if you had read colored for one and white for the other? A. That is correct.

Q. Now are they actually entered in the books of the Granat Bros. as entries on Granat Bros.?

A. Certainly.

Q. I mean, that was only a method of distinguishing, the colors?

A. That's right, just for accounts receivable and to Granat Bros., and the other to L. A. Giacobbi and Sons. [180]

Q. I see.

Mr. Mellin: I offer this bundle in evidence, your Honor, to explain the testimony of Mr. Wineroth and this witness.

The Clerk: Plaintiff's CCC.

* * *

(Invoices referred to above were thereupon received in evidence and marked Plaintiff's Exhibit CCC.)

Q. (By Mr. Mellin): I asked you yesterday afternoon to produce actual records—and by the way, all the records of Granat Bros. are under your control, including the stock control cards and sales cards? A. That is correct.

Q. And from that, this morning, in response to that, you handed me quite a volume of what I think you called “inventory cards”?

A. That is correct.

Q. Now will you tell us, please, what these cards are, and what the material on them shows?

(Handing to witness.)

(Testimony of Forrest Ralph Quick.)

A. Well, these cards we use for the control of our inventory [181] by starting out with the order plates in our factory, which gives you the date order, the date the job was completed——

* * *

A. (Continuing): ——this shows here on design No. 1157W7——

Q. (By Mr. Mellin): By the way, Mr. Quick, so that we will have no question here, are all these cards you produced in connection with Wed Lok rings, and the cards for them, are they so designated? A. Yes, sir.

Q. And these were taken from the actual records?

A. Yes, sir. I will get one here that goes a little further along. This is a Wed Lok curved Wed Lok ring.

Q. Does it give the design number?

A. Yes, sir, 2887-7YW. It is a ladies' wedding ring. We produced it in 1941 to 1943, the rings were sold.

Q. Are actual production figures shown for those three years on that card? A. Yes.

Q. And do you have actual sales noted on the card? And how do they get there?

A. Yes, sir. They are posted there from the sales tags. We check—— [182]

Q. These are all retail transactions that you are speaking of now? A. Yes, sir, by stores.

Q. Go ahead.

(Testimony of Forrest Ralph Quick.)

A. You have in the Mission store, sold a set of these rings in June of '42, July of '42, June of '45, September of '42. The Geary sold one in May of '43; Oakland sold in '42, '41, '42, '43, this one design.

Mr. Mellin: Now these cards, the whole bundle of cards——

Q. Is that whole bundle complete?

A. No, that is not complete. This is all I could find in the warehouse.

Q. I see. So this is at least a portion of them. And what period of years do this group of cards cover?

A. This covers from the period of 1941 to 1946. And even '47 and '48 on some of them.

Q. I see. And they are all Wed Lok cards?

A. Yes.

Q. And they also show sales of Wed Lok rings, during that period? A. Yes.

Q. And they all show manufacture of those during that period? A. Yes.

Q. And all through the period, without any hiatuses, as counsel called it? A. That is right.

Mr. Mellin: I will offer those in evidence as Plaintiff's next in order.

Q. By the way, Mr. Quick, could you go through there and find me a ring, a Wed Lok ring, which has a design number 3957? They have photographs on them, too, those cards, do they not, Mr. Quick?

A. Some of them do, and some of them have

(Testimony of Forrest Ralph Quick.)

been taken off and transferred to other cards. 3957?
I have it.

Q. And does that say "Wed Lok" on it, or not?

A. That says "Wed Lok, No. 35574 YW, diamond ring Wed Lok". [184]

Q. Do you show sales of that, and what year do you happen to have a card for?

A. This shows sales for 1944, 1943, '42, '42, three and four.

Q. Thank you.

I will offer the group of cards produced by the witness as plaintiff's exhibit next in order.

The Clerk: Pardon me. How many are there?

Mr. Groner: Mr. Clerk, what will that number be?

The Clerk: If it is all one exhibit, it will be DDD.

(The cards referred to were received in evidence and marked Plaintiff's Exhibit DDD.)

Q. (By Mr. Mellin): Now, from your books and records—just strike that.

Mr. Quick, will you state whether or not the Granat Bros. have an advertising department, as such? A. Yes, they have.

Q. And do you know of your own knowledge and from your records approximately what that cost Granat Bros., say, per month during the years 1946, '47 and part of '48?

A. The total cost, you mean?

Q. No, I don't mean that. I mean, what does it

(Testimony of Forrest Ralph Quick.)

cost? Is there an average cost per month of your advertising department?

A. Yes. Well, you want to include just salaries, or do you want to include the advertising production, promotion production, and all that? [185]

Q. No, I just wanted—I want what I suppose you would call in your business just the overhead, the salaries and rent, or whatever you do. What about the salaries?

A. The salaries would be around \$2800 to \$3000 a month.

Q. And the overhead exclusive of production, would that be in addition?

A. About another thousand dollars.

Q. Thank you. Now, from your books and records can you tell us the amount of money that was spent by Granat Bros. for national advertising of Wed Lok from May 1, 1947, to December 31, 1947?

A. Yes. It is \$33,659.96.

Q. I see. Now——

Mr. Naylor: Whose advertising is this, counsel?

Mr. Mellin: The Granat Bros., national advertising of the Wed Lok from May 1, 1947, to December 31, 1947.

Q. Now, that date of May 1 was selected, as I understand it, because that is when you started or restarted or recommenced national advertising of Wed Lok after the war, is that correct?

A. That's right.

Q. Now, you handed me a list which was so

(Testimony of Forrest Ralph Quick.)

labeled, and you have one item, "Vogue, Wed Lok ads, \$9,280"? A. That is right.

Q. Trade publication Wed Lok ads, \$830?

A. Correct. [186]

Q. \$4,110, Wed Lok mats and mat folder for dealers, \$2,430.11? A. Correct.

Q. Wed Lok folders, \$6,506.78?

A. That is correct.

Q. Wed Lok display boxes, \$2,266.96?

A. Correct.

Q. Advertising production and miscellaneous pertaining to advertising, \$13,346.11. Now, what is that last item?

A. That last item covers all of the plates, any outside art work done during that period of time, and, oh, incidentals such as paper, overhead, exclusive of salaries.

Q. Exclusive of salaries? A. Yes.

Q. Is that exclusive of this two or three thousand dollars a month, running the advertising department? A. That is correct.

Q. And so this doesn't, the list and the figures you gave, include the flat cost of the advertising department? A. No, sir.

Q. And this sheet that I have a copy of makes this note, is that correct? A. Yes, sir.

Q. And that is a correct notation? A. Yes.

Mr. Mellin: May I offer that in evidence, your Honor, as [187] by years, starting with the year 1934?

(Testimony of Forrest Ralph Quick.)

A. \$4,650.48. 1935 was \$2,803.40. This is for space only.

Q. Yes.

A. 1936, \$5,640.20. 1937, \$1,229.90. 1938, \$3,754.50. 1939, \$1,341.20. 1940, \$2,112.30. 1941, \$994.70. 1942, I have since discovered, is in error. I think there were three advertisements that ran. I gave you copies of the advertisements.

Q. So this doesn't reflect that?

A. That's right.

Q. That is all right. Leave those out.

A. \$77.

Q. And then?

A. 1943, \$1,264.80. 1944, '5 and '6——

Q. You found no ads?

A. No ads. 1947, \$19,296.62. And 1948, for the period from January 1 to July 31, 1948, \$6,652.15.

Q. Now, will you tell us, that last figure, as I understand it, you only had the total figure for the year which was double this \$6000 figure?

A. That is correct.

Q. And you arrived at the \$6000 in what fashion?

A. For seven months, we calculated 5 per cent of the advertisement.

Q. And you would be certain that that would be at least the minimum? [189]

A. Well within it, yes, that is correct.

Q. Now, in the next column you gave me, you

(Testimony of Forrest Ralph Quick.)

gave me the estimated cost of production. Now, will you explain what that was?

A. Well, we find over a period of years, from our experience, that 20 per cent of the cost of this space is the cost of production.

Q. And what is the cost of production? What is production? That is what I don't understand.

A. Well, that would be the plates that you have to have made, and then any outside art work, and also any typesetting.

Q. I see. Now, would you give us those—what was that total figure? What is it?

A. That totaled \$10,008.65.

Q. And then on the right you have a total cost of \$60,055.96 for that period?

A. That is correct.

Q. And then that list is accurate, and you have arrived at the 1948 figures by taking 50 per cent of the actual expenditure for the whole year?

A. That is correct.

Q. And allocated that to seven months?

A. That's right.

Q. And would you say that would be at least the minimum that would have been spent during those seven months?

A. That would be right. [190]

Q. And that list that I hand you, that is the list you gave me, which you have just been testifying from?

A. That is correct.

(Testimony of Forrest Ralph Quick.)

Mr. Mellin: I will offer that in evidence as Plaintiff's next in order.

The Clerk: FFF.

(Schedule of advertisement cost figures was received in evidence and marked Plaintiff's Exhibit FFF.)

Mr. Mellin: That is all.

Mr. Groner: No cross-examination, your Honor.

The Court: That is all.

Mr. Mellin: I will call Mr. Peterson, the president of the defendant.

HENRY PETERSON

called in behalf of the plaintiff; sworn.

* * *

Direct Examination

By Mr. Mellin:

Q. Will you give your name, age and residence, Mr. Peterson.

A. Henry Peterson, forty, 4293 Bedford Avenue, Brooklyn, New York. [191]

Q. And you are the president of the Feature Ring Company, the intervening defendant here?

A. That is correct.

Q. Now, what is your business, Mr. Peterson?

A. Manufacturing of diamond bridal sets.

Q. That is in gold and platinum?

A. Gold and platinum.

(Testimony of Henry Peterson.)

Q. And how long have you been in the business of manufacturing bridal sets?

A. About fifteen years.

Q. About fifteen years? A. Yes.

Q. That would bring it back to about 1934 or '35? A. Approximately.

Q. And that business has always been located in New York? A. That is correct.

Q. Or in that vicinity?

A. That's right, sir.

Q. And your principal business was the manufacture of wedding and engagement rings, isn't that so? A. That's right, sir.

Q. And as a matter of fact, you keep very close tabs on your business, don't you, your own individual business? You run it, don't you?

A. That is correct. [192]

Q. I mean, you watch the sales and manufacture and all the details? A. That is correct.

Q. And you have been in business during that period continuously, isn't that a fact?

A. That's right.

Q. Now, you have been known as the "Feature Ring Company" for about, approximately that same length of time, isn't that so?

A. Yes, sir.

Q. And you are not a corporation?

A. We are now a corporation.

Q. You are now. And you are the principal stockholder, or do you own all the stock?

(Testimony of Henry Peterson.)

A. All the stock.

Q. Now, we have been discussing here that you market a bridal set in which the rings latch or lock together; that has been explained here. That is correct, isn't it?

A. Yes, sir.

Q. When did you start in that business, making that particular set?

Mr. Groner: Making or marketing?

Mr. Mellin: What?

Mr. Groner: Making or marketing?

Q. (By Mr. Mellin): Marketing.

A. First part of '48. [193]

Q. May of—— A. That's right.

Q. That would be a fair statement, wouldn't it?

A. Yes, sir.

Q. May of 1948? A. That's right, sir.

Q. Before that time you had made just plain bridal sets? I mean, that is, marketed?

A. Yes, sir, that is correct.

Q. Now, at that time is it true or not that you adopted for the trade name of your company "Feature Lock"?

A. I adopted the trade name "Feature Lock."

Q. And had you ever heard of the Granat Bros. at that time, the plaintiff here?

A. I had, yes.

Q. And you knew them by their reputation rather well, did you?

A. Vaguely.

Q. Vaguely?

A. I knew they had a good reputation.

(Testimony of Henry Peterson.)

Q. Pardon?

A. They had a good reputation.

Q. I see. And had you heard at that time of the trade-mark, their trade-mark "Wed Lok"?

A. I did.

Q. For how long had you known of it? [194]

A. For about six to eight months prior to my use of the "Feature Lock."

Q. Now, your deposition was taken in this action by your counsel in New York, was it not?

Mr. Groner: It was plaintiff's deposition.

Mr. Mellin: Well, I think you took it out of my hands, Mr. Groner, and I think you took the deposition rather than me.

Mr. Groner: Well, it was simply your choice.

Mr. Mellin: You helped me, or, rather, I helped you.

Q. I read to you from page 14:

"Q. At the time you commenced manufacturing 'Feature Lock' did you know of Granat Bros. or Granat Manufacturing Company?

A. Yes, I did.

Q. At the time you commenced marketing your product under the name 'Feature Lock', had you any knowledge of Granat Bros.' registration or use of the word 'Wed Lok'? A. I did.

Q. How long had you known of that?

A. A few months before, and only spasmodically, and didn't pay very much attention to it.

Q. Did you know enough about it to know

(Testimony of Henry Peterson.)

whether the word 'Wed Lok' had any value or connoted in the general public mind any particular product from a particular [195] source?

A. I did not think that it bore any value to anyone in the public mind or in the industry to any great extent."

You so testified? A. I did, sir.

Q. And that answer—if those questions were asked you today, those would still be your answers? A. Exactly the same, sir.

Q. Now, you have been sitting in the courtroom during the taking of the testimony, haven't you?

A. Yes, sir.

Q. And you have heard of the widespreadness of the customers of Wed Lok rings? You have heard the testimony here?

A. Yes, I have heard the testimony.

Q. And you have noticed the dealers' ads throughout the country as they came into evidence, too, didn't you? I mean, generally?

A. Rather sparingly.

Q. And the widespread sale over the—geographically—of Wed Lok, isn't that so?

A. Sparingly, very sparingly.

Q. And you only noticed—you thought you just noticed it sparingly? A. Well,—

Q. Now, you also heard that there was that national advertising [196] in the Jewelers' Circular, isn't that true? Didn't you, in 1947?

A. I believe so, yes, sir.

(Testimony of Henry Peterson.)

Q. And how about the ads that came into evidence in *Vogue* during the year '47? You heard that in the testimony, didn't you?

A. I heard it during the testimony, but I never saw them.

Q. And you never saw the ad, of course, in the *Jewelers' Circular*—that is a trade journal?

A. I might have seen them in the trade journal, yes, sir.

Q. But it is your testimony you had never heard of "Wed Lok" until a few months before May of 1948; is that your testimony?

A. About six to eight months before.

Q. Now, how did it happen? Now, you noted that Wed Lok ad, those Wed Lok ads, as they are used, and everybody had used them for many years; you had noticed that they were written in a script; you noticed that?

A. I did, when I saw the ads.

Q. And how did it happen that your Feature Lock ad came out in a similar script? What was that? Purely coincidence?

A. I don't believe it to be anywhere near the same kind of writing in "Wed Lok." In fact, I went out of my way to make sure it didn't resemble "Wed Lok" in any way whatsoever.

Q. Oh, in other words, you were conscious of "Wed Lok" at the time you adopted that "Feature Lock" name? A. I was conscious—— [197]

Mr. Groner: The witness has so testified.

(Testimony of Henry Peterson.)

A. —I was conscious of the fact “Wed Lok” was in existence, and I went out of my way to make sure there was, or would be, no infringement or any likeness or similarity between the two names whatsoever.

Q. (By Mr. Mellin): I see. And you felt that the appropriation of the word “Lock” was very clearly——

Mr. Groner: May it please your Honor, I object to counsel’s characterization.

The Court: Well, he used the word laughingly. Change the question.

Mr. Mellin: I will change the use of the word.

Mr. Groner: I don’t think he can take a word out of the language and monopolize it.

Mr. Mellin: You should have remembered those things when you were cross-examining Mr. Granat, and you wouldn’t complain so badly.

Mr. Groner: I still do.

The Witness: Mr. Mellin, all I did was to use the word “Lock” to describe my product, as a locking system.

Q. (By Mr. Mellin): You didn’t think it was sufficient to describe it in the body of the ads, isn’t that so?

A. In conjunction with that. It is actually a feature product with a locking device, and there was no other way I could possibly describe it efficiently, and I took a word out of the [198] English language and I used that word.

(Testimony of Henry Peterson.)

Q. You thought you had a perfect legal right to do that? A. That's right.

Q. Now, as a matter of fact, despite this testimony I have been reading, didn't you know of the tremendous popularity of "Wed Lok" during the years from '34 to '48?

A. It was not tremendously popular at all.

Q. You didn't know of it at all, did you?

A. I never heard of it.

Q. Didn't you make the territory?

A. I had my salesmen make it. I made the territory at times myself. I never heard of it.

Q. What territory did you make?

A. Midwest.

Q. And the East?

A. And sometimes the East.

Q. Did you call on any of the large number of dealers, the jewelers——

A. I had many of them come into my office from all over the country.

Q. And not one of them ever mentioned Wed Lok?

A. Not one of them ever mentioned Wed Lok, and a good many of the men who are the same people you mentioned here never mentioned "Wed Lok" to me.

Q. You never heard of it? [199]

A. No, I never did.

Q. Up until three months before 1948?

A. Around six to eight months, approximately.

(Testimony of Henry Peterson.)

Q. Now I read you from page 52, and the question is rather repeated, but I would like to have it in the record:

“Q. When did you first hear the word ‘Lock’ in conjunction with some other word, used in connection with bridal sets? I am not going to hold you to any date or month.

A. Well, it might have been a few months before I came out with my interlocking set, and I heard it probably casually and didn’t pay any attention to it.”

That is a correct statement? A. Yes, sir.

Q. Yet you, as you testified a moment ago, tried to have—to scrupulously and clearly distinguish between the two, isn’t that so? Now, isn’t there a conflict there?

A. I don’t get what you mean, sir.

Q. Well, here you say that you heard of it casually and didn’t pay any attention to it.

A. That’s right.

Q. And a few moments ago you said that you paid particular attention to distinguishing from “Wed Lok”?

A. When I was about to use my own trademark, I knew that the [200] word, or that the name, “Wed Lok” was in existence..

Q. And you knew it meant Granat products, didn’t you?

A. I knew that they were Granat products, yes, sir, I did. And I made a point to make sure that

(Testimony of Henry Peterson.)

whatever trade-mark I used for my product would in no way infringe, in any way whatsoever, or impair the product of any other manufacturer, regardless of what it was, whether it was Granat or anyone else. There is plenty of room in this country for everyone to conduct their business on a legitimate, legal basis, and consequently I used that word "Lock" because I thought I had a perfect right to use it, to describe my product.

Q. Would you say that your product would be less salable if you described it as "Feature Bridal Sets," and then put in the body of the ads that they were locking rings or interlocking rings?

A. I don't know whether they would be less salable or not. I simply used it to describe my product, and I didn't think of using any other name, for I thought I had a right to use the word "Lock."

Q. Then would you tell me this: Assuming that you considered that you had a right to use it, did you consider the fact that the use of the word "Lock" might bring business from the Granat representation and good will?

A. None whatsoever.

Q. And the same, that it might enhance your sale, using "Lock"? [201] A. Definitely not.

Q. Never entered your mind?

A. No, sir, it did not. We have a reputation of our own to consider, and we base it directly on our own representation and our reputation for

(Testimony of Henry Peterson.)

doing business, and I think it is just as good as Granat Bros.'.

Q. Now, I read you this testimony, your own, page 61 of your deposition:

"Q. Now, as far as your recollection is concerned, you had never seen advertisements of 'Wed Lok' or heard of 'Wed Lok' in connection with wedding ring ensembles until about three months before, let's say, April or May of 1948, is that correct? A. That is correct.

Q. And you have never seen any of the Granat Bros. or other ads advertising wedding ring ensembles prior to that time?

A. No, I did not even see it at that time. I just heard about it.

Q. And you were in the ring business, in the ring ensemble business, weren't you?

A. That's right.

Q. For over twelve years?

A. Approximately."

By the way, if those questions were asked you,—those [202] question were asked you, and those are the correct answers?

A. Whatever answers I gave you were correct.

Q. I see.

A. They were honest and correct.

Q. And you would so testify today if those same questions were asked you?

A. That is correct, sir, to the best of my knowledge.

(Testimony of Henry Peterson.)

Q. Now, on the same page, I read to you from that deposition:

“Q. In other words, you don’t look at the advertisements of competing manufacturers?”

A. Well, sometimes we do. We didn’t pay too much attention to it.

Q. And you don’t pay too much attention to the trade journals?

A. Occasionally, very, very seldom do I have patience to go through a trade journal.”

That would be your testimony today, would it, if you were asked those questions?

A. That is correct.

Q. By the way, you use the—in the Feature Ring Company do they manufacture rings by the tool method or by the casting method?

A. Both.

Q. When did you start the tool method?

A. Several years ago. [203]

Q. And what about these Feature Lock rings?

A. Some are cast, some are a combination of both.

Q. I see. Now, as far as the Feature Lock rings are concerned, they are sold under various other—I mean, brand names, isn’t that so?

A. Yes.

Q. I mean, I am not interested in what those names are. When they are sold by customers of yours, either under their own brand names or

(Testimony of Henry Peterson.)

under Feature Lock, the ads don't include the name "Feature Lock Ring Company," do they?

A. Not in the paper, newspaper advertising, no.

Q. Or in the publications advertising your product, other than the publications of the Feature Ring Company?

A. That's right; the "Feature Lock," that is advertised by the Feature Ring Company, and they have "Feature Ring Company" prominently displayed on every ad.

Q. That is, the Feature Ring Company ads?

A. That's right, sir.

Q. Now, I hand you a group of—I guess they are mat proofs or something?

A. Yes, sir.

Q. Now, those represent the mats that you send to your customers, do they?

A. That is correct.

Q. For republication? [204]

A. That's right.

Q. And none of those include the name "Feature Ring Company", isn't that so?

A. No, sir.

Q. It is the place for the particular jeweler to put his name (indicating)?

A. That is correct.

Q. As a matter of fact, the Feature Ring Company isn't mentioned in any one of those, sir?

A. No; that's right. It is not supposed to be.

Q. But the trade-mark "Feature Lock" in script is on every one?

A. That is correct.

(Testimony of Henry Peterson.)

Q. And referring to diamond ring ensembles?

A. That is right.

Mr. Mellin: May I offer those in evidence as plaintiff's next in order?

The Clerk: GGG.

(Mat proofs of Feature Ring Company were received in evidence and marked Plaintiff's Exhibit GGG.)

Q. (By Mr. Mellin): And you also provide a space in at least the one that I am showing you, the first one of GGG, for a brand name?

A. That's right, sir.

Mr. Mellin: That is all.

Mr. Groner: That is all. [205]

LEE GARNER

called on behalf of the plaintiff, sworn.

Direct Examination

By Mr. Mellin:

Q. Will you give your name and address, please?

A. Lee Garner, Canterbury Hotel, San Francisco, California.

Q. And where are you employed?

A. By the Advertising Checking Bureau.

Q. And where are they located in San Francisco?

A. At 16 First Street.

Q. What is their business?

(Testimony of Lee Garner.)

A. They read and check all the daily newspapers in the country for advertising.

Q. And they are employed in that by those interested?

A. That is right, anyone who wants the service.

Q. Now I will show you report of the Advertising Checking Bureau, Inc., what is labeled, "Special retail advertising cost report of Wed Lok rings in all daily and Sunday newspapers in all cities for the following months: July 1948." Compare it for Granat Bros. and ask you if you can identify that.

A. Yes, we made that up for them.

Q. Were you employed at that time for that particular report? A. Yes, I was.

Q. Now prior to that you were employed to assemble tear sheets [206] but not to make any reports, is that correct?

A. That is right. This is the first report we made. Prior to that we just gave them tear sheets of advertising.

Q. Just a moment, will you tell us—was that report made under your supervision or by you?

A. It was.

Q. And will you tell us how the figures and the things designated thereon were arrived at?

A. Yes, we collect the tear pages, we have an order for all—for instance, we cover in this order all Wed Lok rings. That means that every daily newspaper in the country is read and every ad that mentions Wed Lok rings is furnished—the pages

(Testimony of Lee Garner.)

are collected then for those ads and they are then measured—the advertising pertaining to Wed Lok is measured and then the cost of space is calculated at the national line rate for each of the individual newspapers.

Q. So that on this compilation that you have identified, on the first page there was for the month of July 1948, 219 advertisements, 55,611 lines, and the cost of space was \$9,443?

A. That is right.

Q. On the subsequent—By the way, was this only for Wed Lok?

A. Yes, that is for Wed Lok.

Q. Only? A. Yes.

Q. And on the subsequent pages there is on the left a designation [207] of state and city, the store, which would be the advertiser?

A. That is right.

Q. The publication? A. That is right.

Q. Then the date, the trademark advertised, the number of lines in the advertisement and the cost of that advertisement? A. That is right.

Q. And this, you say, is actually made up in the fashion you testified to? A. That is correct.

Mr. Mellin: May I offer that in evidence, your Honor, as Plaintiff's next in order?

* * *

(Advertising Checking Bureau report referred to above was thereupon received in evidence and marked Plaintiff's HHH.)

(Testimony of Lee Garner.)

Q. (By Mr. Mellin): Now prior to July 1948, were you employed to assemble clippings of Wed Lok ads for Granat Bros.?

A. Yes, at that time we were checking all Wed Lok ads and furnishing them the newspaper pages showing all ads.

Q. You checked the number of tear sheets of ads of Wed Lok only? [208]

A. That is right.

Q. I hand you a card which shows "Advertising on Wed Lok rings Granat Bros."

Mr. Taylor: May we see that?

The Clerk: Very well. (Document was handed to counsel.)

Q. (By Mr. Mellin): I hand you a card and ask you if that is part of the records of your company?

A. Yes, it is. This is our billing record.

Q. And that was kept in the regular course of business?

A. That is right.

Q. Now that shows the month of July there, does it not, 1948?

A. That is right.

Q. And that compilation we just offered in evidence, which is Exhibit HHH, is the result of those clippings indicated on the tear sheets?

A. That is right.

Q. Now what are those other months, are they for the months—

A. October 1947 through July 1948.

Q. All right. And then I notice some figures in the column next to that—for example, October is

(Testimony of Lee Garner.)

134, November 255, December 1,433, January 1,348, and so on. What are those figures?

A. Those are the number of Wed Lok ads which were furnished to Granat Bros. month by month.

Q. Each month by month. And there is a cost column there on the right. What is that? [209]

A. That is the amount for which they were billed at 7 cents each.

Q. Yes. 7 cents per tear sheet?

A. That is right.

Mr. Mellin: I offer that in evidence as Plaintiff's next in order.

(Billing card referred to above was there-upon received in evidence and marked Plaintiff's Exhibit III.)

Mr. Mellin: That is all.

Mr. Groner: No cross-examination. [210]

Wednesday, March 16, 1949—2:00 o'Clock

Mr. Mellin: If your Honor please, we have the depositions of nine witnesses taken, one in Los Angeles, one in Salem, Oregon, one in Denver, one in Aurora, Illinois, one in Chicago, one in Buffalo. The depositions are typical, and with the court's permission I will make a brief statement that will cover all of them at once. Will that be satisfactory?

The Court: Yes.

Mr. Mellin: I will use the one of Mr. Jacoby at Portland, which is the first one I have before me,

as being typical of all of them. They are the same except for different numbers.

Mr. Jacoby testified he was a jeweler of Portland, Oregon; "that he has been in the jewelry business approximately 43 years and in the retail business in Portland for 39 years. That he has known of Granat Bros. for close to 30 years or longer, and knows that Granat Bros. makes the finest quality wedding rings and diamond rings obtainable. That he is familiar with the trade-mark Wed-Lok and stated that the Wed-Lok ring ensemble was manufactured by Granat Bros. and has known of the ring ensemble sold under the trade-mark Wed-Lok for a period of 10 years or longer. That when he hears the word "lok" or "lock" used in connection with wedding ring or engagement ring ensembles, he thinks of Granat Bros.

"That Granat Bros. has such an excellent reputation in the [211] Portland area that every jeweler in the city attempts to get their line. That he sells Wed-Lok ring ensembles and advertises wedding ring ensembles extensively in the Portland newspapers. He produced books of his newspaper advertisements from 1947 to the date of the deposition. The book was kept in the regular course of business and showed all of the Wed-Lok advertisements that were placed in the Portland papers during that period, that the advertisements were introduced into evidence as Plaintiff's Exhibits 1 to 37, inclusive. That he advertised in both the Portland Journal and the Oregonian. He also produced his diamond ring register which showed continuous purchase of

Wed-Lok rings from May 10, 1937 to October 11, 1941. He stated at least one-third of the wedding ring-engagement ring ensembles he sells are Wed-Lok rings. He also testified that there was at present a display of Wed-Lok rings in the window at the front of his store.

“That he has known of the sale of wedding ring-engagement ring ensembles sold under the trade-mark Feature-Lock for approximately one year, and saw it first in a newspaper advertisement of a competitor and thought that Granat Bros. was selling their rings in Portland through another dealer, he having previously had an understanding with Granat Bros. that only he and one other dealer would sell the Granat line. That when he first saw Feature-Lock, he thought that it applied to a Granat product. That he has customers enter his store and ask for ring ensembles, [212] calling for them by the trade-mark Wed-Lok, and that this occurs frequently. That Feature-Lock mountings were offered him through Mayer Bros. of Seattle, and he has seen the Feature-Ring ensembles. That the quality of the Feature-Lock ensembles does not compare to the Granat rings, the latter being far superior.

“Cross-Examination

“That Exhibit 4, one of his advertisements, states, “Wedding and engagement rings that lock as one”, and that these rings have a mechanical means that snap together.

“That his ads do not use the word “Granat”.

However, they tell customers who come in to look at the rings that they are manufactured by Granat Bros. That some of his ads state that the two rings lock together. That prior to the war Jacoby purchased from Granat Bros. Wed-Lok rings that dovetailed. That he receives mats from Granat Bros. and then cuts them up and re-arranges them, changing the copy if it does not suit him. That during the war he did not know whether Granat Bros. was making Wed-Lok rings or not. That he was not able to secure them. That he used to go to San Francisco and buy what he could from Granat Bros. as they were not accepting orders and at times Granat Bros. would send to him what they had. That this same condition applied to other merchandise he sold.

“That the records he had on hand show the last purchase of Wed-Lok rings in 1941. However, this stock was not immediately sold and the stock record book does not show when the rings [213] were sold. His records would show that at least one set of Wed-Lok rings was sold September 11, 1942. That he said the ad of Dan Marx & Co., 511 Southwest Broadway, Portland, Oregon in the Sunday Oregonian advertising Feature-Lock wedding ring ensembles.

“Redirect Examination

“That he purchases the quantity of Granat Bros. products because he shopped in the East and West and all over, and found that Granat has the finest line that he can buy, and that their business is built on fine quality merchandise.”

I offer in evidence the depositions in this action of Moritz Jacoby, Holly G. Jackson, Leonard B. Goldblatt, Floyd Kleiger, Arther A. Navarro, Charles Van Sipma, Norman Kernis, Harry Gamler, and the exhibits attached thereto. Those are on file with the clerk.

Mr. Groner: No objection, your Honor.

The Clerk: You say there are nine altogether?

Mr. Mellin: One more; I have the deposition of Shapiro.

Mr. Groner: I understand, may it please your Honor, that at some time convenient in the future if we care to supplement my brother's statement, that is in order?

The Court: Oh, yes, certainly, I expect you to do that.

Mr. Mellin: And that of Benjamin B. Shapiro.

* * *

(The depositions introduced on page 214 were received in evidence and marked as follows: Plaintiff's Exhibit JJJ, Moritz Jacoby; Plaintiff's Exhibit KKK, Holly G. Jackson; Plaintiff's Exhibit LLL, Leonard B. Goldblatt; Plaintiff's Exhibit MMM, Philip Kleiger; Plaintiff's Exhibit NNN, Arthur A. Navarro; Plaintiff's Exhibit OOO, Charles Van Sipma; Plaintiff's Exhibit PPP, Norman Kirnes; Plaintiff's Exhibit QQQ, Harry Gamler; Plaintiff's Exhibit RRR, Benjamin J. Shapiro.)

* * *

HENRY PETERSON

recalled as a witness on behalf of defendant, previously sworn.

The Clerk: You may resume the stand, having previously been duly sworn.

Direct Examination

By Mr. Groner:

Q. You have been heretofore sworn, Mr. Peterson? A. I have, yes.

Q. You are the president of the intervening defendant in this case? A. I am. [219]

Q. When, as well as you can recall, did you form the Feature Ring Co.?

A. Approximately 15 years ago.

Q. That was about 1934, '35?

A. Approximately.

Q. Will you speak a little louder so Mr. Mellin will hear? A. I will try.

Q. And will describe the type of products you have made during that period, and up to April of 1948?

A. We have made engagement rings and wedding ring combinations.

Q. When did you first become interested in the idea of interconnecting wedding rings and engagement rings?

A. From this period, about six years ago.

Q. And what caused you to become interested in such interconnection?

A. The purpose of time, plus ideas of my me-

(Testimony of Henry Peterson.)

chanics, plus demands of the public to where they wanted rings that did not turn on the finger. In some cases, we were asked to solder the bottom of two rings together so that they did not turn on a woman's finger.

Q. When did the wedding ring commence to be used with some diamonds on it but not all around?

A. I don't know exactly when, but a good many years ago.

Q. And is it that type of ring only which creates discomfort by turning? [220]

A. I should imagine so.

Q. Now you said about six years ago, you became interested in this. Will you follow your course from there on?

A. Six years ago I started to experiment with an interlocking set, and I had it in several stages, some of which—some of my customers wanted them. But I didn't think it was good enough to market. When I finally reached a stage when I thought I had a good interlocking set, I naturally wanted to market the product, and I wanted to have it patented. So I asked my attorney at that time to search the records to see whether my particular project was an infringement on anyone else's, before I put it on the market, or before I applied for a patent.

The Court: And about when was this?

The Witness: This was in 1946 or '47. I think it was around that time.

A. (Continuing): The search produced a pat-

(Testimony of Henry Peterson.)

ent which was similar to what we had produced in our factory. It wasn't exactly the same, by any means, but the wording of that particularly patent had me guessing as to whether we would not infringe in this other person's ownership of that patent. At that time I came to you, Mr. Groner, and I showed you the search that this other attorney had made, and I asked you for your opinion as to whether we would be infringing upon anyone in the event we marketed this particular interlocking set. And you said, yes, we would. So I asked you what could be done about it. You said [221] that the only way was to buy the patents from these other people who owned them, which we did. We bought the patents, and we started to market our interlocking sets on the basis of acquiring this patent. Only then did we market our interlocking sets.

Q. Well, now, before your marketed your interlocking set, what was the procedure adopted by you with respect to a trademark?

A. We wanted to call it by a certain name, and we felt that the best way, the best name to call our interlocking set by, would be one befitting the product. Naturally we didn't want to infringe on anyone else's trademark, regardless of what trademark was being used by what manufacturer; so we thumbed through all possible trademarks pertaining to interlocking sets, and we picked one that we were more than sure would not infringe upon any-

(Testimony of Henry Peterson.)

one's trademark, and we applied for "Feature Lock".

Q. Did you in the process reject several suggested marks which seemed attractive to you?

A. I did. I felt that we would be too similar to what other people were using. Some were using "Love Lock", some were using "Bridal Lock", some were—there was Granat products which use "Wed Lok". There were a lot of locks being used, not only "Feature Lock" or "Wed Lok". And I thought the best way out would be to use a name which in no way came near anyone else's. So I applied for registration of "Feature Lock", and I got it.

Q. Now I hand you Defendant's Exhibit 6 (handing to witness). Is that the registration you refer to? [222]

A. That is correct.

Q. And despite the fact that the Granat marks were registered in the Patent Office, the Patent Office granted you this registration, No. 506514?

A. That is correct, sir.

Q. And in drafting the application upon which this registration was based, you disclaimed the word "lock", did you not?

A. I did.

Q. Now in connection with your use, since that time, has there been any use of the word "lock" except as descriptive of the particular product to which the mark has been applied?

Mr. Mellin: Just a moment, please. May I hear that question?

(Testimony of Henry Peterson.)

(Previous question read by the reporter.)

Mr. Mellin: I object to that question, your Honor, on the ground that it is usurping the power of the court and calling for the conclusion of the witness.

The Court: I think it is calling for the conclusion of the witness. Sustained.

Mr. Groner: May it please your Honor, the witness' intent, I think, is material to the inquiry here.

The Court: Well, I think what his intent might be is a question for me to decide. He can tell what he did.

Q. (By Mr. Groner): Let's develop that, Mr. Peterson. After you adopted the words "Feature Lock", will you explain what your [223] policy was with respect to the sale of your interlocking sets? Tell the court how you sell them and to whom you sell them and the general surrounding circumstances.

A. We manufacture only the blanks. We advertised the——

Q. Now what do you mean by "blanks"?

A. The mountings, without diamonds. We don't sell to the retail trade, with the exception of the so-called chain store concerns and jobbers and wholesalers. We advertise it widely in all the magazines in the country, almost all—if there are some that we haven't advertised in, I don't know. We supplied mats, we supplied stuffers, we supplied warranty instruction booklets, we supplied——

(Testimony of Henry Peterson.)

Mr. Groner: Excuse me just a moment. Would you mind reading back to me the last part of the answer?

(Last portion of previous answer ready by reporter.)

A. (Continuing): —counter cards, and a lot of other material that for the moment I just can't think of.

Q. Now can you state about when your product, the interlocking product, I mean, bearing the name "Feature Lock", first appeared on the market?

A. About May '48.

Q. In that month did you do any national advertising? A. Just in trade magazines.

Q. And how many of the trade magazines did you advertise in?

A. I believe there were about eight. [224]

Q. And did that include substantially all of the large trade magazines in the country?

A. If there are any others, I don't know of them.

Mr. Groner: I call attention, if it please your Honor, to the fact that the Jewelers' Circular Keystone, introduced by the plaintiff as Exhibit I, is one of those magazines.

Q. And I hand you, Mr. Peterson, a copy of the Pacific Goldsmith for May 1947, and I ask you if you have an advertisement in that magazine (handing to witness). It is on page 19.

A. Yes, that is our ad.

(Testimony of Henry Peterson.)

Q. Does that contain the name of "Feature Ring Co."?

A. Yes, sir.

Mr. Groner: Would your Honor care to look at it?

The Court: It is the same as this one here?

Mr. Groner: Very much so.

Q. Now in that same magazine, was there a news article which would serve to explain to at least a section of the public, on page 146, I think, Mr. Peterson?

A. Yes, there is.

Q. Would you mind reading that, if you please?

A. "New Feature Ring Co. locking device. The Feature Ring Co., New York City, announces that it has perfected a new development known as the 'Feature Lock', a device that keeps matching engagement and wedding rings from twisting and turning, thereby insuring a complete integration of the twin designs. [225]

"The device itself is a tiny, interlocking catch, entirely hidden from view when the rings are worn, leaving no extending parts to rip or tear gloves, hosiery, clothing. According to Henry Peterson, President and founder of the company, 'Feature Lock' was perfected only after intensive development work, research and exhaustive testing.

"To acquaint the consuming public with the advantages of 'Feature Lock' rings, retailers will receive from their distributors a course of sales-promotional material, including newspaper mats, illustrated warranty and instruction booklets, displays, etc."

(Testimony of Henry Peterson.)

It is announced:

“ ‘Feature Lock’ is sold only through authorized distributors who are granted the right to sell the patent Feature Lock under their own brand name or the registered name ‘Feature Lock’, states the Feature Ring Co. ‘Feature Lock’ is patented in the U. S. Patent Office, No. 2029464-2127766, and other patents pending.”

Mr. Groner: I should like to introduce the May issue of the Pacific Goldsmith at this time, if it please your Honor.

* * *

Mr. Groner: Sorry. Is this Defendant’s 7?

The Clerk: Yes, sir, Defendant’s 7. [226]

(May issue of Pacific Goldsmith referred to above was thereupon received in evidence and marked Defendant’s Exhibit No. 7.)

Q. (By Mr. Groner): Now how many dealers have you had, Mr. Peterson, who have sold this product? A. A few hundred.

Q. Have you discussed the selling methods which you employ with any of them?

A. We have explained to them that they can receive all this advertising material which they in turn should impart to their retail customers, and by these few hundred distributors we reach possibly ten to 20 thousand retailers or maybe more.

Q. Now you spoke of the mats that you had furnished these customers of yours. I hand you a yellow

(Testimony of Henry Peterson.)

folder with a number of sheets beneath it. (Handing to witness.) Is this illustrative of the type of material you furnished to your customers?

A. That is right. These are copies of the mats that they could receive by us for their retail trade.

Q. And do those mats contain the top yellow cover that you have here in your hand?

A. No, the mats are——

Q. No, I mean the material which you submit to your customers, is it like this? (indicating).

A. Yes, sir.

Q. With this yellow sheet on the top?

A. That is correct. [227]

Q. And with the name "Feature Ring Co." at the bottom of it? A. That is correct.

Q. Now there is some handwriting on that folder. Would you read that for us?

A. "All figures approximate." You mean this: "All advertising mats first used in May '48. Used about 600 books."

Q. And then when you say "books" you mean——?

A. Complete books, like this (indicating).

Q. You mean the thing you have in your hand?

A. Yes. "About 180 customers".

Mr. Groner: I should like to introduce that, if it please your Honor, as Defendant's Exhibit 8.

The Clerk: Defendant's 8.

(Booklet of newspaper mats referred to above

(Testimony of Henry Peterson.)

was thereupon received in evidence and marked Defendant's Exhibit No. 8.) [228]

The Witness: By "customers", I mean distributors.

Mr. Mellin: Not retailers?

The Witness: No, wholesale distributors.

Q. (By Mr. Groner): Now, you also provide your customers with this counter card which I hand you? A. That is correct.

Q. And it bears the words "Look, they lock"?

A. That's right.

Q. And what does it say beyond that?

A. "First used August 1948. Figures approximate. Used 5000 cards for 180 customers."

Q. Does that card which you have just referred to use the expression, "Look, they lock"?

A. It does.

Q. And then does it say, "Ask to see the secret lock"? A. That is correct.

Q. And then does it say, "Wear them separately, lock disappears"? A. That is right.

Q. And it uses the trade-mark "Feature Lock"?

A. That is right.

Q. As descriptive of that particular type of ring to distinguish it from other type rings made by you?

A. That is correct, sir.

Mr. Groner: I should like to introduce that as defendant's next in order, if it please your Honor.

The Clerk: No. 9.

(Testimony of Henry Peterson.)

(The counter card referred to was received in evidence and marked Defendant's Exhibit 9.)

Mr. Mellin: Can I have that question and answer again, please?

(Previous question and answer read.)

Mr. Mellin: I make a motion to strike that as being purely calling for the conclusion of the witness.

The Court: Well, the statement that it distinguishes from other rings, I think that that is.

Mr. Mellin: That part can go in, but as to the descriptive——

The Court: Yes, "descriptive," that word may go out and that part of the answer.

Q. (By Mr. Groner): Now, I hand you a proof and ask you if this is an advertisement of the "Feature Ring Company" (handing to witness).

A. It is.

Q. And did that appear in the magazines appearing at the top of that proof?

A. It did.

Q. Would you mind reading it?

A. "As seen in Executive Jeweler, Jewelers Circular Keystone, Mid-Continent Jeweler, National Jeweler, Northwestern Jeweler, Pacific Goldsmith, Southern Jeweler, and Jewelry." [230]

Q. And they are all trade magazines?

A. That is right.

Q. And that is the two-page advertisement as it appeared in those various magazines?

A. That is correct.

(Testimony of Henry Peterson.)

Q. And at the bottom of each of those pages is the words "Feature Ring Company of New York"?

A. That's right.

Mr. Groner: I should like to introduce that, if it please your Honor, as defendant's next in order.

The Clerk: No. 10.

(Advertising proof referred to was received in evidence and marked Defendant's Exhibit 10.)

Q. (By Mr. Groner): I hand you another booklet of mats (handing to witness). Did you furnish that also to some of your customers? A. I did.

Q. Can you state about how many?

A. How many mats to individuals, or just the books?

Q. Well, as it states on the face of it there, please.

A. Well, books, all figures approximate, used about 600 books, sent to about 180 customers. The individual mats, of course, are much more.

Mr. Mellin: Much more what?

The Witness: Well, each, we have used——

Mr. Groner: He said approximately.

The Witness: For instance, these, this first mat, we have 1280 mats, and then so on, each page. This is 1380 mats.

Q. (By Mr. Groner): Suppose you read them all the way through.

A. 1350 mats of this one. Of course, by now they

(Testimony of Henry Peterson.)

are much more. 1250 mats of this one. 1200 mats of this one. 1250 mats of these.

Mr. Mellin: None of the rest?

The Witness: No, that is a ring design, which go with every book. There are no mats with them. If there are mats, we haven't got them listed.

Mr. Groner: I should like to introduce these as defendants' exhibit next in order.

The Clerk: No. 11.

(Booklet of mats referred to was received in evidence and marked Defendants' Exhibit 11.)

Q. (By Mr. Groner): Now, one more advertisement. What is this (handing to witness)?

A. This is a stuffer, which we have used 15,000 of approximately.

Mr. Mellin: Would you tell me what a stuffer is?

The Witness: Well, they fold up and you put them into an envelope when the retailer sends out a statement to a customer. It is sort of an advertisement. [232]

Mr. Mellin: You get that with the bill?

The Witness: That is right, with the bill.

Mr. Groner: I should like to introduce that as defendants' next in order.

The Clerk: No. 12.

(Advertising stuffer was received in evidence and marked Defendants' Exhibit 12.)

Mr. Groner: To avoid taking any more time

(Testimony of Henry Peterson.)

than is necessary, I have a collection of other material here.

Q. Would you glance over these, Mr. Peterson, and tell me first whether this is representative of the advertising material which the defendant has sent out, and the quantities in which each particular piece has been sent out?

A. They are all ads, are advertising material, and this first stuffer we have used approximately—we have used about 25,000 of these, about 45,000 of these.

Q. The number appearing on each one? You are reading from the particular one, is that correct, Mr. Peterson?

A. That is right. 45,000 of these, 6000 of these, 25,000 of these, 5000 of these, about 400 of these, 2000 of these, 2000 of these, and 5000 of these, 5000 of these.

Mr. Groner: If I may, I will put these all in the envelope and then introduce them as the same exhibit.

The Court: One exhibit?

Mr. Groner: One exhibit. I think it tends to simplicity. [233]

Mr. Mellin: May I look at them, counsel?

Mr. Groner: Surely.

Mr. Mellin: The first two do not have the name of Feature Ring Company. Is that true of all of them?

The Witness: That is advertising material to our

(Testimony of Henry Peterson.)

customers. I don't think—let me take a look at them—These go to our distributors. Our distributors put their names in.

Mr. Mellin: I apologize to you, counsel. I am not trying to take your witness.

Mr. Groner: It is perfectly all right. I am just trying to get a little more ammunition.

Mr. Mellin: Does the Feature Ring Company appear?

The Witness: No. Our distributors used their own names.

Mr. Mellin: That is all I want to know. Thank you. Are you going to offer them?

Mr. Groner: Yes. I offer this as Defendants' Exhibit No. 13.

(Advertising stuffers were received in evidence and marked Defendants' Exhibit 13.)

Q. (By Mr. Groner): I hand you now a blank of an advertisement with a typewritten page attached to it, giving the names of various magazines and the dates of publication. Is that an advertisement which Feature Ring had issued and is that a statement of the magazines in which it appeared?

A. That is correct. [234]

Mr. Groner: I should like to introduce that, if your Honor please, as Defendants' Exhibit 14.

Mr. Mellin: Does that have "Feature Ring Company" on it?

Mr. Groner: Yes.

(Testimony of Henry Peterson.)

The Witness: Yes.

(Advertising blank with typewritten page attached was received in evidence and marked Defendants' Exhibit 14.)

Q. (By Mr. Groner): I hand you another similar sheet. A. That is right.

Mr. Groner: I should like to introduce that as Defendants' Exhibit 15.

(Advertising blank was received in evidence and marked Defendants' Exhibit 15.)

Q. (By Mr. Groner): Still another, Mr. Peterson? A. That is right.

Mr. Groner: I should like to introduce that, if it please your Honor, as Defendants' Exhibit 16.

(Advertising blank was received in evidence and marked Defendants' Exhibit 16.)

Q. (By Mr. Groner): Now, Mr. Peterson, after you had come on the market with your product how soon did you hear from the plaintiff?

A. Very shortly after.

Q. Did you ever hear from this plaintiff directly? A. No, sir. [235]

Q. Did he ever notify you of any alleged infringement? A. No, sir.

Q. Despite the fact that you had advertisements in all the trade magazines in May 1948?

A. That is correct.

Q. How did you hear of this plaintiff?

(Testimony of Henry Peterson.)

A. This plaintiff was sending letters to all my customers threatening them with suit.

Mr. Mellin: All of them?

The Witness: Well, I say "all". I don't know how many actually, but a good many of them. To me it seemed as if it was all, because all I got was long distance call after call, letter after letter, people becoming panicky that they had better stop using the trade-mark Feature Lock, otherwise they intended to sue them.

Q. (By Mr. Mellin): The letters said that, you mean?

A. Words to that effect. I don't exactly know the wording, but it was a threatening sort of letter. It led most of my customers to call me up or write me asking what to do.

Mr. Mellin: Mr. Reporter, will you mark that question and answer for me.

Q. (By Mr. Groner): I hand you a copy of what purports to be a letter from Mr. Joseph B. Gardner to Kay Jewelers, dated April 8, 1948, and ask you if you know anything about that.

The Court: Do you wish to see it first? [236]

Mr. Mellin: No, but if your Honor please, if this is not in connection with the trade-mark "Feature Lock" I want to object to it. I would like to object to it on that ground.

The Court: Well, you may see it first.

(Document handed to Mr. Mellin.)

Mr. Mellin: This, your Honor, relates to the use

(Testimony of Henry Peterson.)

of the trade-mark "Tru-Lock" that they were sued upon and has no relation and does not mention "Feature Lock", and on that ground it is immaterial.

Mr. Groner: May it please your Honor, first off, I haven't offered it yet. I shall ask your Honor receive it—I wanted to bring out some of the facts to establish a sufficient background for it.

The Court: Very well.

Q. (By Mr. Groner): Would you mind stating what that letter is?

A. It is a letter asking them——

Q. Asking whom?

A. Asking Kay Jewelers to discontinue the use——

The Court: From whom was the letter?

The Witness: The letter is from Joseph B. Gardner, the Central Bank Building, Oakland, California, which I believe was the attorney for Granat Bros. at that time.

Mr. Groner: There is no question about that, is there, Mr. Mellin? [237]

Mr. Mellin: No.

The Witness: If I may read this——

Mr. Groner: Surely.

A. It is quite some time ago.

"Gentlemen:

Our attention has been directed to an advertisement of yours which appeared in the 'Los Angeles Examiner' under date of March 28, 1948. The ad-

(Testimony of Henry Peterson.)

vertisement relates to an assertedly new inter-connecting ring ensemble or combination identified by the term 'Tru-Lock'. We have furthermore inspected the rings as so offered for sale in your store.

For many years, this exact type of goods has been manufactured and sold nationally under the trade-mark 'Wed-Lock' or 'Wed-Lok' by our client Granat Bros., Inc. of San Francisco, California. Over the years large sums have been expended by Granat Bros. in advertising and otherwise creating a valuable good will for its products under the trade-mark 'Wed-Lock' or 'Wed-Lok'. These trade-marks are protected by United States Registrations No. 185,365 of June 10, 1924, and No. 430,436 of June 10, 1947, and are filed for re-registration under the Lanham Act.

We are convinced without reservation that the contemporaneous use of 'Tru-Lock' and 'Wed-Lock' to [238] identify identical types of ring ensembles of different manufactures will most certainly cause confusion in the trade and in the minds of the purchasing public. It is also our position that your acts in offering to sell the goods in question under 'Tru-Lock' will mislead and deceive the public and enable you to take advantage of the good will and business reputation that our client has established in connection with the goods sold by it under the name 'Wed-Lok' or 'Wed-Lock'. Your use therefore of 'Tru-Lock' is considered to be an infringement of the trade-mark rights of our client, and in

(Testimony of Henry Peterson.)

view thereof you are hereby notified to immediately discontinue the use of 'Tru-Lock' on the goods aforesaid. Please inform us promptly of your position in the premises.

We note from your advertisement and from an inspection of the so-called 'Tru-Lock' rings, that the word 'Patented' is applied to such rings. An investigation has been made by us for ascertaining all unexpired patents other than those owned or controlled by our client, which might relate to your rings. However, we have been unable to find any patent as a result of such investigation of other than the Granat Patents, which we feel covers the construction of your rings. The Coleman Patent No. 2,127,766 appears to [239] bear the closest resemblance to your rings, but we cannot see where the claims of this patent embrace said construction. Under the circumstances therefor, we request that you kindly advise us of the basis for the patent mark aforesaid.

Very truly yours,

/s/ JOSEPH B. GARDNER."

Mr. Mellin: What is the date of that letter, Mr. Peterson?

The Witness: April 8, 1948.

Mr. Mellin: That is before you commenced manufacturing rings?

The Witness: No, that is not true. We held back——

(Testimony of Henry Peterson.)

Mr. Mellin: But the advertisement appeared March 1——

Mr. Groner: Wait a minute, Mr. Mellin. I will attempt to bring out the facts.

Q. Mr. Peterson, you stated some time ago that you appeared on the market with that in May of 1948?

A. That could be.

Q. Now, was Kay Jewelers a customer of yours?

A. That is correct.

Q. And that letter is dated April 8, isn't it?

A. That is right.

Q. Now, can you explain that seemingly discrepancy?

A. We had an arrangement with the Kay Jewelers to give them, I believe it was, either 60 or a 90-day exclusive on this interlocking [240] set because in return they were going to publicize it greatly by going through a tremendous advertising program and they were to use our interlocking set exclusively; in return they would use—we granted them the right to use Tru-Lock as their own trade-mark——

Q. You didn't grant them that right?

A. Not exactly "grant".

Q. You mean you didn't object?

A. We didn't object; that is correct.

Q. On that score isn't it a fact that you have constantly represented to the trade that the trade could either use your trade-mark, Feature Lock, or their own mark if they desired to do that?

(Testimony of Henry Peterson.)

A. That is entirely correct. [241]

Thursday, March 17, 1949—10:00 A.M.

* * *

Mr. Groner: May it please your Honor, reference has been made on a number of occasions to this book, and I should like, if it please your Honor to introduce the title page and page 50, which is the single page to which reference has been made, as Defendants' Exhibit 17.

The Court: It will be received.

(The pages of book referred to were received in evidence and marked Defendants' Exhibit 17.)

HENRY PETERSON

resumed.

Direct Examination

(Continued)

By Mr. Groner:

Q. Mr. Peterson, when we concluded yesterday you had just read a letter from Mr. Gardner to the Kay Jewelers.

I should like to offer that letter, if it please your Honor, as Defendants' Exhibit 18.

(The letter referred to was received in evidence and marked Defendants' Exhibit 18.)

Q. (By Mr. Groner): I hand you now, Mr. Peterson, a letter on the letterhead of Joseph B.

(Testimony of Henry Peterson.)

Gardner, dated April 19, 1948, and addressed to Zale's Jewelers of Houston, Texas, and a copy of a letter [242] on the stationery of Mellin and Hanscom dated August 2, 1948, addressed to Zale's Jewelers, Corpus Christi, Texas. Are Zale's Jewelers customers of Feature Ring Company?

A. They are.

Q. And were those notices sent you by your customer?

A. That is correct.

Mr. Groner: May it please your Honor, I should like to introduce the two letters as Defendants' Exhibit 19.

(The letters referred to were received in evidence and marked Defendants' Exhibit 19.)

Q. (By Mr. Groner): I now hand you several letters clipped together, photostats, the top one of which, on the letterhead of Mellin and Hanscom, is addressed to S. H. Friend of San Francisco.

Mr. Mellin: That is the defendant?

Mr. Groner: That is one of the defendants, yes.

Q. You subsequently received that?

A. That is right.

Q. From Friend and Company?

A. I did.

Mr. Groner: I should like to introduce those three letters as Defendants' Exhibit 20.

(The letters referred to were received in evidence and marked Defendants' Exhibit 20.)

Q. (By Mr. Groner): I now hand you another

(Testimony of Henry Peterson.)

clip of three [243] letters, commencing with one on the stationery of Mellin & Hanscom dated July 16, addressed to Morgan Allen Company—(Exhibiting document to Mr. Mellin).

If you will let it go in without objection, why, I will have him identify it.

I should like to introduce it as defendants' Exhibit 21, may it please your Honor.

Mr. Mellin: You are just introducing the letter from Mellin & Hanscom?

Mr. Groner: No, I mean all three of them.

Mr. Mellin: I object to the other two as purely self-serving. They are opinions of two lawyers as to the merits of the matter, one by present counsel and one counsel in San Francisco—merely an opinion as to whether Feature Lock infringes on Wed Lok.

Mr. Groner: I am entirely willing to withdraw mine. Mr. McCune as counsel for the recipient of the letter wrote my client, and I submit, may it please your Honor, that the letter——

Mr. Mellin: Hearsay also.

Mr. Groner: The hearsay rule, I submit, has nothing to do with letters of this sort. These letters in themselves are *res gestae*. The letter notifying the defendant of infringement started the ball rolling and other letters inevitably followed, and they depict the reaction of the recipients. [244]

Incidentally, if it please your Honor, Mr. McCune

(Testimony of Henry Peterson.)

will be here later today and if there is any question as to his identity——

Mr. Mellin: There is no question of that.

The Court: I understood your objection to be that this is self-serving. This is written by a counsel for one of the customers?

Mr. Mellin: That is right, your Honor, and gives an opinion—as I recall, gives an opinion as to whether this infringes or not.

Mr. Groner: It might be, may it please your Honor, Mr. Mellin's letter expresses a rather broad opinion, but that is not sufficient to rule it out.

The Court: He expresses the opinion that the name "Feature Lock" is not an infringement of the trade-mark "Wed Lok." I do not see what value it would be to the Court if somebody expresses such an opinion.

Mr. Mellin: Well, I will withdraw my objection.

Mr. Groner: I should like to introduce those two letters—the copy of my own letter having been withdrawn—as Defendants' Exhibit 21.

(The letters referred to were received in evidence and marked Defendants' Exhibit 21.)

Q. (By Mr. Groner): I now hand you, Mr. Peterson, a letter on the letterhead of Perel & Lowenstein, Inc., of Memphis, Tennessee, dated August 17, 1948, and addressed to Feature Ring Company. [245] Beneath that is a carbon on the

(Testimony of Henry Peterson.)

letterhead of Feature Ring Company addressed to Perel & Lowenstein dated August 20, 1948, and apparently signed by you as president of Feature Ring Company. Finally, a second letter by you dated August 20 and addressed to Mr. Joseph C. Marmann of Perel & Lowenstein. Did you receive the letter from Perel & Lowenstein which is on top?

A. I did.

Q. Were they customers of yours?

A. They were.

Q. Did you respond as shown in the two carbon copies attached? A. Yes, I did.

Mr. Groner: I should like to introduce those three, if your Honor please, as Defendants' Exhibit 22.

(The letters referred to were received in evidence and marked Defendants' Exhibit 22.)

Q. (By Mr. Groner): I now hand you a clip of correspondence between the Feature Ring Company and D. C. Percival & Co. of Boston, Massachusetts. Did you either receive those letters or did you send the corresponding carbons?

A. I did.

Mr. Groner: I should like to introduce those, may it please your Honor, as Defendants' Exhibit 23.

(The letters referred to were received in evidence and marked Defendants' Exhibit 23.)

Q. (By Mr. Groner): And I hand you another clip of letters, [246] the top one of which is on the

(Testimony of Henry Peterson.)

stationery of Barnett Davis of Pittsburgh, with carbons to Feature Ring Company. Were they sent and received as indicated?

A. That is correct.

Mr. Groner: I should like to introduce those, if it please your Honor, as Defendants' Exhibit 24.

(The letters referred to were received in evidence and marked Defendants' Exhibit 24.)

Q. (By Mr. Groner): And another sheaf, the top one of which is on the stationery of Mellin & Hanscom, dated December 16, 1948, and addressed to Mr. Jack Farrar. Can you identify those?

A. That is correct.

Mr. Groner: I should like to introduce this as Defendants' Exhibit 25.

(The letters referred to were received in evidence and marked Defendants' Exhibit 25.)

Q. (By Mr. Groner): I hand you now another file, the top letter of which is on the stationery of Mellin & Hanscom, dated August 3, 1948, addressed to Julius Dreyfus, Inc. Can you identify those?

A. I certainly can.

Mr. Groner: Defendants' Exhibit 26, if it please your Honor.

(The letters referred to were received in evidence and marked Defendants' Exhibit 26.)

Q. (By Mr. Groner): I now hand you another clip; the top letter here is on the stationery of

(Testimony of Henry Peterson.)

Mellin & Hanscom, dated August 3, addressed to Friedmann Jewelers. Can you identify all of them?

A. I can.

Mr. Groner: I should like to introduce them, if it please your Honor, as Defendants' Exhibit 27.

(The letters referred to were received in evidence and marked Defendants' Exhibit 27.)

Mr. Groner: And another letter which Mr. Mellin has just identified for me written by him to David Sarkin, Inc. If I might, I should like to introduce it as Defendants' Exhibit 28.

(The letter referred to was received in evidence and marked Defendants' Exhibit 28.)

Q. (By Mr. Groner): I hand you now a file, the top letter of which is on the stationery of Ed Kain & Co. of Chicago. Can you identify that?

A. I can.

Mr. Groner: I should like to introduce that, if it please your Honor, as Defendants' Exhibit 29.

(The letters referred to were received in evidence and marked Defendants' Exhibit 29.)

Q. (By Mr. Groner): Now, Mr. Peterson, as a result of the receipt of all these letters did you cause advertisements to be placed in certain trade journals? [248]

A. I did.

Q. I hand you now two sheets clipped together and ask you if the under sheet is a reproduction of

(Testimony of Henry Peterson.)

the advertisement as placed, and if the first sheet is a statement of the various publications in which it appears. A. That is right.

Mr. Groner: May I show that to your Honor (exhibiting).

The Court: Is that the same letter that appears in the front of the exhibit you referred to at the beginning of the session today?

Mr. Groner: No, your Honor, I don't think it is in evidence, and I don't believe any prior note——

The Clerk: This is the first one (exhibiting to Court).

The Court: No, the book you had, the cover you referred to.

Mr. Groner: A trade magazine? I don't believe that is in evidence.

The Court: Isn't it on file?

Mr. Groner: No, I don't believe so.

Mr. Naylor: That is the trade-mark listing.

Mr. Groner: May we have that first one? That simply lists all jewelers' trade-marks, and it has Granat's, too.

The Court: I thought it was in evidence.

Mr. Mellin: That letter is in evidence, your Honor. I put it in in my case. [249]

The Court: It is already in evidence.

Mr. Groner: Excuse me; I didn't realize you put it in. I am somewhat swamped in the volume of advertising material here.

(Testimony of Henry Peterson.)

The Court: I think it is Vogue.

Mr. Mellin: No, it is in the Jewelers' Circular Keystone that I offered earlier in the trial. It is right opposite a Feature Lock ad. I offered both pages.

Mr. Groner: I should like to introduce it, if it please your Honor, as Defendants' Exhibit 30.

The Clerk: No. 30.

(The copy of advertisement and list of publications were received in evidence and marked Defendants' Exhibit 30.)

Q. (By Mr. Groner): Now, Mr. Peterson, yesterday we were talking something about your business, and you referred to the fact that you had started business under the trade name of "Feature Ring Company" about fifteen years ago. I hand you a photostat of a certificate of doing business (handing to witness).

Mr. Mellin: I will stipulate to that.

Q. (By Mr. Groner, continuing): —and I will ask if that is the certificate of your company?

A. It is.

Mr. Groner: I should like to introduce that, if it please your Honor, as Defendants' exhibit next in order.

The Clerk: No. 31.

(The certificate was received in evidence and marked [250] Defendants' Exhibit 31.)

(Testimony of Henry Peterson.)

Q. (By Mr. Groner): Now, Mr. Peterson, yesterday during your testimony you referred very briefly to your outlets or distributors. I understand that you sell only through your distributors; that is correct, isn't it? A. That is correct.

Q. Would you mind stating first, as of last April-May, 1948, and then as of today, how many distributors you have?

A. I didn't get that question. I am sorry.

Mr. Groner: Will you read it back, please?

(Question read.)

A. Last April or May I had about three or four hundred distributors, and now I think I have about the same amount today.

Q. Now, have you any idea—strike that, please.

Could you state where those distributors are located? A. All over the country.

Q. Is there any part of the country not covered by those distributors? A. No.

Q. Could you make an estimate of the number of retailers covered by each of those distributors?

A. That would be a very hard guess.

Q. Well, do your best.

A. Well, I would imagine that a distributor has a minimum of possibly a hundred and maybe a maximum of two or three thousand. [251]

Q. Is there any way you can form an estimate as to the number of distributors covered, or the number of retailers covered by all your distributors?

(Testimony of Henry Peterson.)

A. Well,—

Mr. Mellin: If you multiply a guess by a guess, that will give it to you.

A. Well, if you multiply 400 by 200, you would have a very small estimate.

Q. (By Mr. Groner): Now, getting away from the realm of guess, can you state the number of Feature Lock sets manufactured by your company which were sold to these distributors of yours during the year 1948? Now, that means starting in maybe in April or May of 1948, and extending through December 31.

A. I should imagine we sold 70 to 80,000 sets.

Q. Now, you say you imagine that. Don't you know that you have sold that number?

Mr. Mellin: That is leading, counsel.

A. I know that we haven't sold less than 70,000, but I am not quite sure whether we reached the 80,000 mark.

Q. (By Mr. Groner): Now, these sets which you sell are simply findings, are they not?

A. They are sets without the diamonds.

Q. And they are called findings or blanks?

A. Findings or blanks or mountings.

Q. And your product never includes the diamonds? [252] A. No.

Q. And the diamonds invariably are put in the product either by the distributor or by the retailer who is sold by the distributor; isn't that correct?

A. That is entirely correct.

(Testimony of Henry Peterson.)

Q. Could you place an average sales price for the sets which were sold during the year 1948?

Mr. Mellin: You mean the findings or afterwards?

Q. (By Mr. Groner): For the findings.

A. Approximately \$14 to \$15 per set.

Mr. Mellin: Of the two rings?

The Witness: Two rings.

Q. (By Mr. Groner): Now, can you state the average value of these \$14 to \$15 sets after the diamonds have been mounted?

A. An approximate average would be anywhere from \$150 to \$250 per set.

Q. Now, in computing that average, what is the minimum within your knowledge?

A. It would be approximately \$14,000,000.

Mr. Groner: Would you read the question back? I don't think he understood me.

(Question read.)

Q. (By Mr. Groner): The minimum per set of a mounted set. A. Minimum?

Q. Yes. [253]

A. That would be about \$85, \$90.

Q. And the maximum of such sets, within your knowledge? A. A thousand dollars, \$1200.

Q. Now, on the basis of a minimum of an average of \$150 a set, could you state the value of the sets sold by you after having been mounted?

A. You would have to multiply by 70,000 or 80,000 sets; you would have to multiply that by

(Testimony of Henry Peterson.)

\$150. That would be about \$15,000,000 or \$16,000,000, something like that.

Q. Now, coming back again to your business, can you state the volume of that business, gross, in the year 1948?

Mr. Mellin: Is this limited to these rings?

Mr. Groner: No.

A. The total gross?

Q. The total gross of your business in the year 1948.

A. I don't have the exact figures, but I should say between two and a quarter million and two and a half million dollars.

Q. And what percentage of that, according to your best figure, was accounted for by Feature Lock sets? A. About a million dollars worth.

Q. And during the year 1947, what was the volume of your gross business?

A. About a million and a half dollars.

Q. There were no Feature Lock sets during that year? A. None whatever. [254]

Q. What was the gross volume of your business in 1946?

A. About a million and three-quarters.

Q. And in 1945?

A. Approximately a million and a half.

Q. Now, during this period—that is, from 1945 through 1948—can you state how many employees you had? I want it as nearly exactly as you can state it, year by year.

(Testimony of Henry Peterson.)

A. I don't know just how many we had in 1945, but I can go from '48 down, if that will be satisfactory.

Q. Do your best.

A. In 1948 we had about 225 employees. In 1947 we may have had approximately 200, and in 1946 we may have had 220 or 225, or somewhere, as much as we did in 1948. In 1945 we may have had 160 or 170.

Q. Now, coming to the Feature Lock sets, and the year 1949, as far as it has progressed, can you state how many Feature Lock sets you have sold in 1949?

A. When I left New York we had sold about 35,000 sets.

Q. And when did you leave New York?

A. Last Thursday.

Q. A week ago today?

A. A week ago today.

Mr. Groner: Will your Honor help me out and give me the date? I saw you looking at the date there.

The Court: It would be March 10. [255]

Mr. Groner: Thank you, sir.

Q. Mr. Peterson, can you state the cost to Feature Ring Company of its advertising of the Feature Lock ring during 1948?

A. A little over \$35,000. [255-A]

Q. How about thus far in 1949?

(Testimony of Henry Peterson.)

A. We have let contracts go for about \$65,000 already.

Q. Do you have an example with you of one of the subjects of those contracts?

A. This is a model of our new counter card. In fact, this is a finished proof (producing counter card and handing to counsel).

Mr. Groner: May I introduce that as Defendant's Exhibit 31?

The Clerk: No. 32, sir.

(Counter card referred to above was thereupon received in evidence and marked Defendant's Exhibit No. 32.)

Q. (By Mr. Groner): Now when you gave the cost of this advertisement for 1948 and thus far in 1949, I understand that it includes both the trade magazine advertisements and various types of advertisements which you hand to your distributors to be handed to the ultimate retailer?

A. That is correct.

Q. Now do the distributors, and do the retailers, receive the mats and so forth from you, pay for their own advertisements in local publications?

A. They do.

Q. Have you any idea as to the amount they have employed the mats furnished by you in local newspaper advertising?

Mr. Mellin: I am going to object to that if it is

(Testimony of Henry Peterson.)

only an idea or a guess or a surmise, unless there is some basis for basing his figure. [256]

Q. (By Mr. Groner): Would you mind making your answer, Mr. Peterson, bearing in mind what my brother has said in stating the basis upon which your conclusion is reached?

A. We too subscribe to a clipping service, and we have written to our customers asking them to send to us tear sheets of their ads, as we are always interested as to what progress they were making in the advertisement of Feature Lock. They would be very kind and send them in to us. We have, back in New York—unfortunately they are not here—pile after pile of tear sheets of newspaper advertising. I don't know the exact value of it. I wouldn't take it upon myself to venture a guess, but I have been told by people who have far more experience——

Q. Wait a moment. Don't say what you have been told, just stick to your own knowledge. Could you estimate from what you have seen, the number of such advertisements?

A. A very small guess would be a million dollars.

Q. Now how about the number of advertisements?

A. Oh, I have got so many I couldn't count them.

Q. Now I hand you three pieces torn from newspapers and ask you if you will look at them and tell me if they are typical of the type of advertise-

(Testimony of Henry Peterson.)

ment we are now talking about (handing to witness).

A. These are small ones. We have much larger ones than these, but these are typical of the advertising of Feature Lock.

Mr. Groner: Does your Honor care to see them?

The Court: Yes.

(Newspaper clippings handed to the Court by Mr. Groner.)

Mr. Groner: I should like to introduce these, if it please your Honor, as Defendant's Exhibit 33, these three pieces of newspaper pages advertising the Feature Lock; and in each case the retailer sponsor is Hamilton Diamond Company of Los Angeles.

The Clerk: No. 33.

(Newspaper clippings referred to above were thereupon received in evidence and marked Defendant's Exhibit No. 33.)

Q. (By Mr. Groner): Now, in addition to the material which you sent to your distributors and retailers,—roats and materials of that sort, particularly—have any of these retailers written you for additional materials? A. They sure have.

Q. Has that happened frequently?

A. It does.

Q. Have retailers also written to Feature Ring Co. voluntarily asking for Feature Ring line?

(Testimony of Henry Peterson.)

A. For Feature Lock?

Q. Yes. A. They certainly have.

Q. That has happened frequently?

A. It happens every day.

Q. Now have any of these retailers ever asked you for Wed Lok? A. No. [258]

Q. You stated yesterday and again I am asking of the type of advertisement which you furnished the distributors and to retail dealers, that that material did not bear the name "Feature Ring Co." Can you explain why that is?

A. It is a common fact in the jewelry industry, when supplying distributors with advertising material, not to put the manufacturer's name on the material, so as to give them an opportunity——

Q. Who do you mean, "them?"

A. The distributors. To give the distributors the opportunity of putting on their name on the bottom or on the top, wherever they choose, of the advertising material.

Q. What would be the reaction of the distributor if you did put your name on?

A. They just wouldn't buy any merchandise from us. We can't go to the retail trade with our name; it is not our customer. It is the customer's customer.

Q. Now from the beginning of the Feature Ring Co., how would have your goods, sent to your distributors, been packaged?

(Testimony of Henry Peterson.)

A. In envelopes bearing "Feature Rings" or "Feature Ring Co."

Q. And how have those rings been marked or stamped? A. "F. R. Co."

Q. Do you still follow that practice?

A. I do.

Q. With respect to packaging? [259]

A. With one exception; where the distributor chooses his own trademark, we put his trademark in instead of ours. But we do not ship a ring out of our plant without a trademark in it.

Q. A trademark or a name or an abbreviation of such? A. That is correct.

Q. Now as I understand it, your rings, not Feature Locks, which are shipped out of your plant today, will have "F. R." or "F. R. Co." stamped on the inside of the band, is that correct?

A. That's right, sir.

Q. Now what is your practice with respect to Feature Lock?

A. We stamp "F. L. Patented" and the trademark.

Mr. Mellin: You mean "F. L." and "Patented?"

The Witness: That's right. "Feature Lock" is too long to put inside of a shank. We have to leave room for a customer to put in their initials. So we have to abbreviate it.

Mr. Mellin: I will stipulate that that is done.

Mr. Groner: Thank you, sir.

(Testimony of Henry Peterson.)

Will your Honor indulge me while I hunt?

The Court: We will take a recess.

(Recess.)

Mr. Groner: May it please your Honor, I learned during the recess that there has been a misapprehension of one of my questions. I should like to ask it over again, if I might.

Q. Mr. Peterson, I asked you some time ago in the early part of this hearing how many distributors you had and you answered [260] about 400, I think. A. That is right.

Q. Would you mind stating what you have 400 distributors for?

A. For the Feature Rings as a whole.

Q. Now how many distributors have you for Feature Lock sets? A. Approximately 200.

Q. Does that approximation apply from last April-May, 1948, up to date, or has it grown somewhat in the period?

A. I think it has grown definitely.

Q. Well now, could you set a minimum figure of the number of Feature Lock distributors during the early introduction period of Feature Lock?

A. Seventy-five to 100 to start with, the first month or two.

Q. And it has now grown, you say, to about 200?

A. At least.

Q. Now is your coverage through those Feature

(Testimony of Henry Peterson.)

Lock distributors national or is it only part of the United States?

A. It is national, coast to coast.

Q. And could you estimate the number of accounts per distributor handling Feature Locks?

A. There again I would have to venture a guess that it might be, oh, from 100 to a few thousand.

Mr. Mellin: Apiece?

A. Each customer, each distributor.

Q. (By Mr. Groner): Now your statements of sales during the [261] year 1948 and then the year 1949 were not statements of sales of Feature Rings but of Feature Lock? That is correct, is it not?

A. I didn't get the first part of the question.

Q. You made a statement following your earlier about the number of dealers you had, you made a statement about the sales of Feature Lock as between 70 and 80 thousand in 1948?

A. That is correct.

Q. You weren't referring to Feature Rings or rings then but to Feature Lock sets, were you not?

A. Only the Feature Lock sets. It has no bearing on our other production.

The Court: He has definitely so stated.

Mr. Groner: I thought so, but there is a con-tiguity there that I wanted to be sure we didn't leave ambiguous.

Q. Now Mr. Peterson, I hand you the Pacific Goldsmith for May, 1947, which is Defendant's Exhibit 7, and I turn to page 19, which is the

(Testimony of Henry Peterson.)

Feature Lock advertisement. There are three black—five black boxes in that advertisement, one at the top containing the words “Feature Lock Ring mountings,” and then three horizontal ribbons appear with various statements of the quality or character of the mountings, and I indicate the topmost one of those. Would you mind reading it for me, please?

A. “Individual mountings with the patented Feature Lock are perfect streamlined rings in themselves.”

Q. Now what do you mean by the “patented Feature Lock?” [262]

A. Well, we have a little lock that comes out of the wedding ring and when not in use it folds back completely out of sight.

Q. Do you have one of those sets with you?

A. I have.

Q. Is the set illustrated in this operation at the lefthand side of the advertisement that you are referring to?

A. It is.

Q. Would you mind taking the set which you have and explaining it to his Honor so that he may understand just what its nature is?

A. (Demonstrating): This lock that you see on the wedding ring fits into an opening in the mounting like that and with a twist they lock together. Now when you want to wear them separately and don't want this to stick out, it folds away like that.

(Testimony of Henry Peterson.)

Now they can be sold individually like two rings, as we have done in the past, and you have the interlocking feature as well. It comes right out and can very simply be locked together.

Q. Now I hand you Plaintiff's Exhibit E which I understand is the current set of Granat Wed Lok rings—is that correct, Mr. Mellin?

Mr. Mellin: That is correct.

Mr. Groner: And this is the subject of the exciting announcement that you have averted to before?

Mr. Mellin: Yes, the exciting announcement is the new construction, this construction as exemplified, one of about 15 [263] or 16 different types of Wed Loks. This is the latest type. This is the new addition to the line.

Mr. Groner: I understand.

Q. Now Mr. Peterson, I hand you Plaintiff's Exhibit E. Will you contrast the operation of the locking mechanism there and the locking mechanism in your Feature Lock sets?

A. (Demonstrating): This wedding ring has two knobs sticking out which fit into two holes in the mounting. These cannot be hidden in any way; they stay that way unless they are filed off.

Q. Does that make any difference, Mr. Peterson?

A. It makes a lot of difference. If the person were to wear this separately, it would catch on her stockings, gloves, clothing, silk dress, and it mars the beauty of the set or of the ring itself, rather.

(Testimony of Henry Peterson.)

Q. There is no such protuberance on the Feature Lock sets? A. There is none whatsoever.

Q. And have you ever used the expression "Feature Lock" in conjunction with any product not bearing that—may I see the magazine so I can quote it exactly—patented Feature Lock?

A. No.

Q. Those words "Feature Lock" have never been used on any product of the defendant Feature Ring Co. that didn't have the lock as a part of the product, is that correct?

A. That is correct.

Q. Now returning to this advertisement, Defendant's Exhibit 7, [264] Mr. Peterson, there are some drawings at the side. Would you mind explaining the purpose of those drawings, and explain so that his Honor can understand and follow you, please?

A. In order for our customers to know the fine points of Feature Lock, also for them not to confuse our set with any other set that was either on the market or would be put on the market, we elaborately showed the manner in which our set operates. We felt that we had a practical set, the most desirable set, and we wanted the entire country to know how it works so there should be no doubt in anybody's mind that this particular interlocking set belonged to Feature Ring Co. or was the manufacturer of such a particular interlocking set.

Q. Now in connection with that same thing, have you consistently followed the policy in your adver-

(Testimony of Henry Peterson.)

tising of using contrasting yellow and black and white, Mr. Peterson?

A. We have for some time. We are now deviating somewhat into different colors.

Q. Do you know anyone else who has followed that policy at all in advertising any type of interlocking set? A. I do not.

Q. In connection with your business as president of Feature Ring Co., do you have contacts with distributors and with retailers, Mr. Peterson?

A. I do.

Q. Have you ever acquired any knowledge of confusion between your [265] product and plaintiff's Wed Lok?

A. Absolutely none whatsoever.

Q. Have you consciously taken such steps as you could throughout the history of Feature Lock to distinguish it from any other interlocking set made from any source or by any person at all?

A. I certainly have.

Mr. Groner: The witness is with you, sir.

Cross-Examination

By Mr. Mellin:

Q. Mr. Peterson, I understood you to say—please correct me if I am wrong—that you had about—let's take the overall business—about 400 distributors now? A. Approximately.

Q. Would you say that each of them would sell to a minimum or an average of 200 jewelers?

(Testimony of Henry Peterson.)

A. That is a rough guess, a hundred to a couple of thousand.

Q. Now that in my figures would be 80,000 different retailers, isn't that right?

A. I realize that.

Q. Now as a matter of fact, don't you know that there are only 25,000 retail jewelers in the United States according to the Jewelers' Board of Trade?

A. I understand that.

Q. But you still sell to 80,000, that is 60,000 more than actually exist, is that your testimony?

A. My testimony, I stated that it is purely a guess. We have on [266] our books over 400 distributors, and I venture a guess that they at least have a hundred and I know that some of them have a few thousand. Now it is very possible that different distributors call on the very same customers—that the same customer would be called on by five different distributors, and if you whittle it down, actually there may be only 20,000 retailers covered by the entire amount.

Q. Well now, you think, then, you have probably sold Wed Lok instead of the 80,000 that you seemingly led me to believe, 80,000 retail jewelers, now you say it may be 20,000?

Mr. Groner: Excuse me, Mr. Mellin, I think you misstated. Didn't you say that he sold Wed Lok?

Mr. Mellin: If I did, it was unconscious and I had no—I am talking about Feature Lock.

(Testimony of Henry Peterson.)

The Court: I think you will stipulate that the defendant has not been selling Wed Lok.

Mr. Mellin: Yes.

Q. 80,000—and now you say 20,000?

A. I beg your pardon, your Honor, did you say the defendant was selling Wed Lok?

The Court: I say, counsel will stipulate the defendant is not selling Wed Lok.

The Witness: I am sorry.

Q. (By Mr. Mellin): You now say, instead of 80,000 which was your estimate earlier, you now estimate 20,000 out of the 25,000 [267] retail dealers?

A. Mr. Mellin, what I said was I have three or four hundred distributors, and each of them have anywhere from a hundred to two thousand accounts. Those distributors, some of them, may have the same accounts.

Q. You mean all of them may have one account?

A. I mean you as a distributor may go to Tom Jones in Chicago and every other distributor in Chicago may go to Tom Jones, but I don't. I can't stop them from going wherever they please.

Q. So you don't want to leave the court with the impression you sell 80,000 retail jewelers?

A. No.

Q. As a matter of fact, you are certain from your knowledge of the jewelry business you aren't selling 20,000 of the 25,000 retail firms, aren't you?

A. No, I am not certain; I might be selling 20 of the 25,000, I might be selling 25 of the 25,000.

(Testimony of Henry Peterson.)

Q. So then it is just purely a guess?

A. It is not just purely a guess. The entire country is covered by distributors of mine, and I venture they cover every retailer from coast to coast.

Q. Are all those other estimates you gave here just as accurate as this one you gave?

A. No, they are more to the point, if you are talking exact figures of how many Feature Locks we have manufactured and how [268] much business we have done.

Q. Let's talk about this million dollars you spoke of; as I understand you, you had approximately a million dollars in dealer advertising would be your estimate? A. That is a guess, purely a guess.

Q. Purely a guess. Let's say it might be closer to two hundred thousand?

A. Or two million.

Q. It might be anywhere from two hundred thousand to two million? A. That is right.

Q. Now do you subscribe to that clipping service we introduced the other day?

A. Not necessarily your clipping *serve*.

Q. I meant that particular one.

A. I don't know what you mean, Mr. Mellin.

Q. There was a lady on the stand who represented a clipping bureau.

A. What was the name of that clipping service?

Q. Well, it is of no moment, but does your

(Testimony of Henry Peterson.)

clipping service give you the service of giving you the lineage of Feature Lock ads? That is the Advertising Clipping Bureau, Inc.

A. No, sir.

Q. But they do give you the service of checking your own advertisements and telling you how much they cost in all newspapers they appeared in and the total expenditures by your dealers during the year? [269]

A. No.

Q. You don't subscribe to that?

A. No, I don't subscribe to that.

Q. Now when you are talking about advertising—By the way, speaking about advertising, Mr. Peterson, you were talking about yellow and black—that is only the Feature Ring Co.'s advertisements?

A. That is correct.

Q. And all the others go out in black and white?

A. All the other what?

Q. I mean the ones from the distributors to the dealers and the dealers to the public?

A. No, no, that is not so.

Q. There are some different colors?

A. We have a lot of stuffers and displays in black and white.

Q. I am talking about, let's say, the newspaper advertisements.

A. The newspapers are black and white.

Q. And the catalogues of the dealers are black and white, aren't they?

(Testimony of Henry Peterson.)

A. I should imagine in most cases. There are some maybe two-toned.

Q. So that the general public, let's say, they see the black and white ones?

A. In the newspapers but not in stuffers.

Q. Now these advertisements that are put out in the various [270] newspapers, Mr. Peterson, as represented by one of these mats—isn't that so?

A. Yes, sir.

Q. Or something like that? A. That is so.

Mr. Groner: Mr. Mellin, will you give the exhibit number so——

Mr. Mellin: I beg your pardon, that is Exhibit No. 8.

Q. Now those are all in black and white?

A. That is right.

Q. And no where would appear where the goods originated, is that so, the manufacturer?

A. As I mentioned before, it is not customary to do so. They are not our customers, they are our distributors' customers.

Q. I see. Did you hear counsel say yesterday in argument that one of the distinguishing signs of the Wed Lok trademark and the Feature Lock trademark was putting them on an angle to the horizontal and setting the word "lock" down from "Feature" such as I show you in these ads?

A. I don't quite get that, sir.

Q. Well, is that true or not?

A. I don't know what you just said.

(Testimony of Henry Peterson.)

Q. I beg your pardon. As I understood counsel yesterday, and I don't care to misquote you—at least——

Mr. Groner: I said that was the generality. There were [271] some exceptions, but that was the generality.

Mr. Mellin: I see. That the word "Feature" appeared on a slant and the word "lock" was on a slant and relatively offset as shown here—I mean the word "lock" is a little bit below the word "Feature." A. That is so.

Q. I mean, is that one of the distinguishing things between Feature Lock and Wed Lok?

A. No, there is——

Q. In appearance? A. There is——

Q. In appearance?

A. One of them. We try to make Feature Lock as far different from Wed Lok as possible. We didn't want to have any part of Wed Lok in any resemblance of name or anything.

Q. You hate them?

A. No, I don't hate anything. We have our own product which we feel is good enough to sell. We don't have to hide behind any other product in the country. Our reputation stands out as good as anyone's and we base our business on that. We don't have to follow anyone. People follow us.

Q. And that is the reason that you laid out the two words in that fashion, is to further distinguish——

A. Whatever we did at that time——

(Testimony of Henry Peterson.)

Q. Will you answer the question? [272]

A. I don't remember—we did everything we could——

Q. I didn't ask you if you did it for that purpose, Mr. Peterson, would you say that is one of the reasons they were set off that way, to distinguish that by itself? A. Yes.

Q. And you followed that practice rather consistently of putting those ads out in that fashion, didn't you? A. Right, sir.

Q. Now as a matter of fact, the ads—those mats that you produced here in court aren't the mats that you are currently using, isn't that so?

Mr. Groner: Well, they were put in evidence two months ago or three months ago, Mr. Mellin.

Mr. Mellin: You don't want the court to believe that those are the style in which "Feature Lock" is written today?

A. We have different styles. We have the script running this way, we have it in different ways. Another thing, some of our customers change our mats around a little bit after they get them.

Q. But they always get the cut of Feature Lock, the words "Feature Lock," do they not?

A. They do, unless they want to eliminate that and put their own names in, and I don't see any difference in the ads of Feature Lock in the ads you just gave me and the ones you are talking about. If you show me those ads you are talking about, you will [273] find that Feature Lock is written the same way.

(Testimony of Henry Peterson.)

Q. What ads are you talking about?

A. The ones you are talking about, the ones you showed me.

Q. I haven't shown you any ads, I showed you just mats.

A. Well, what mats did you show me?

Q. (Exhibiting to witness): Now go through those and tell me if in each instance there the word "Feature Lock" is not on two lines and at an angle.

A. In this particular series of mats they are all the same way.

Q. You heard counsel state that that was at least a distinguishing feature when he argued?

Mr. Groner: He certainly did. There is no question about that.

Q. (By Mr. Mellin): Now you don't want the court to believe that that is the way you are currently advertising?

A. Court to believe what?

Q. That that is the way you always do this, with that distinguishing feature?

A. Not necessarily.

Q. And I show you the—if I can find out what paper this is—the Sunday Tacoma News Tribune, Sunday, January 2, 1949, and I ask you if that isn't one of your mats and it is written on one line? (Handing to witness.)

A. That's right.

Q. And I show you the Sunday Oregonian for February 6, 1948. [275] Is that '48 or '49? I can't see it. It must be '49.

(Testimony of Henry Peterson.)

Mr. Groner: It is '49.

Q. (Continuing): —for '49. And isn't that one of your rings and one of your Feature Lock ads? (Handing to witness.)

A. That is correct.

Q. And still a different mat, December 17, 1948, Feature Lock is also on the same, one line?

A. Yes.

Q. Now I show you the Punka City News for Friday, January 21, 1949, and I show you the Feature Lock with the word "lok." Does that occur occasionally with your customers?

A. When was this?

Q. You can see it on the paper—January or February of this year? I beg your pardon. If I remember correctly—what does it say up there? January 21, 1949.

A. Well, that is a mistake by our printer. That is all. I have no control of that.

Q. You have heard of other instances of your customers so advertising, haven't you?

A. Whenever I had one or two, and whenever I saw them, I immediately wrote them and told them to stop.

Q. And one was Zale's, in Texas?

A. That is correct. I immediately put a stop to it.

Q. Now I show you the Shawnee, Oklahoma News Star, Sunday, January 30, and Feature Lock is written in script there on one [275] line, isn't

(Testimony of Henry Peterson.)

that so, although on a slight slant? A. Yes.

Q. And I show you the Suffolk News Herald, January 30, 1949, another ad in which "Feature Lock" is prominently displayed in script on one line; isn't that correct?

A. That is correct.

Q. These are all your rings, of course?

A. Yes, they are all our rings.

Q. Then I show you the Lexington Herald for January 28, 1949, in a smaller mat of yours in which "Feature Lock" is on one line, is that correct? A. That's right.

Q. And I show you still a further picture of a Feature Ring mat of January something—January 23, 1949, I guess—in which Feature Lock is displayed on one line in script on the level?

A. That is correct.

* * *

Q. (By Mr. Mellin): We show you the Ontario, Oakland, California, [276] of February 16, 1949, "Feature Lock" is displayed in one line there with a still different mat, and then we will show you the Marshall, Texas, News Messenger for February 13, 1949, in which "Feature Lock" is still different, a still different mat, on which "Feature Lock" is at a slight slant but on one line. Now you have all of those various different mats, haven't you?

A. Yes, sir.

Q. But the only ones you produced were the ones that were on a slant and on two lines?

A. That is different—

(Testimony of Henry Peterson.)

Mr. Gruner: That is primarily my fault. I thought at the time of the depositions, at the time they were taken, we put in what was completely representative, and I just didn't want to crowd the record. I haven't even asked him about any advertisements since that time. I had no idea what had been advertised.

Mr. Mellin: These were in January, some of these.

Mr. Gruner: I think this is making a mountain out of a molehill, but if there be faults, it is my fault and not Mr. Peterson's.

Mr. Mellin: May I offer these as plaintiff's next in order?

The Clerk: SSS.

(News clippings referred to above were thereupon received in evidence and marked Plaintiff's Exhibit SSS.)

The Witness: May I see a small ad. that small ad badge?

Mr. Gruner: I don't know what you mean. [277]

The Witness: That yellow book, a small one. I didn't think that we had to worry about all this.

Mr. Gruner: May I be excused for a moment?

The Court: Yes.

Q (By Mr. Mellin): Now—

Mr. Gruner: Wait just a moment, please.

Mr. Mellin: Oh, I beg your pardon, counsel.

Mr. Gruner: Is that what you meant?

(Testimony of Henry Peterson.)

The Witness: Yes. May I see that, please?

(Exhibits handed to witness by Mr. Groner.)

The Witness: Mr. Mellin, if I may, your Honor? We entered those Feature Lock ads in our mats on the straight line right here (indicating). We didn't hide the fact. I didn't think it was necessary to hide it.

Mr. Mellin: Well, counsel made a point of it yesterday, and you only introduced the ones that were on two lines.

The Witness: We have them on every mat in this book. [278]

Mr. Mellin: Well, we just wanted all the facts, that is all.

Q. Now, with respect to these letters, you have identified the one of Mr. Jack Farrar, to Mr. Jack Farrar by Mellin & Hanscom, which I would like to read to you:

“ . . . has called our attention to the fact that you are advertising a combination wedding ring and engagement ring under the trade-mark ‘Dovetail Lock’.”

Then I will read a letter from the Bastheim Company. Now, that is your dealer, isn't it?

A. That's right.

Q. This is to the Feature Ring Company, Inc., 126 West 46th Street, New York City, New York:

“We are enclosing herewith a copy of a letter we have received from Jack Farrar, Inc. at 122 South K Street, Tulare, California, together with a copy

(Testimony of Henry Peterson.)

of a letter which they received from Mellin & Hanscom, attorneys for Granat Bros.

As our customer is quite concerned, we would appreciate it very much if you would write and tell them that you will protect them in Feature Lock advertising. If they do not receive this assurance, we feel sure that they will not purchase any more Feature Lock rings.

Will you please send us a copy of the letter you [279] write to them.

Thanking you, we remain, with kindest regards,

Very truly yours,

E. BASTHEIM COMPANY."

Now, as a matter of fact, your dealer was confused as to who manufactured Dovetail Lock, because as a matter of fact, Dovetail Lock is not of your manufacture, isn't that so?

A. That is correct.

Mr. Mellin: Do you want me to prove it?

Mr. Groner: No, not at all. I just suggest that you read the next letter, which I think quite clearly explains that.

Mr. Mellin: The only point I am making here is that the dealer, that here is a dealer that asked him for protection from Dovetail Lock, showing that because of the word "Lock" there can be confusion.

Mr. Groner: May it please your Honor, I don't like to have only half a story. We put these things

(Testimony of Henry Peterson.)

in without reading them in order to save time. Now, right there in the file is a complete explanation of the thing.

Mr. Mellin: Well, I will read it all, then.

Mr. Groner: I think that is very nice.

Mr. Mellin (reading):

"Enclosed is a copy of a letter we just received from Mellin & Hanscom,"——

This is from Farrar to Bastheim Company.

"It seems to me that this is going to eventually involve you and the manufacturers of the 'Feature Lock'. Fortunately we haven't ran any advertisement in the local newspapers yet on the 'Feature Lock' ring sets, but we did run an ad on the 'Dove-tail Lock'.

Will you please advise us as to what action you are going to take on the matter."

Then it goes on:

"We are in receipt of your special delivery letter about the 'Feature Lock'.

As per your request we are enclosing the original letter received from Mellin & Hanscom, who are representing Granat Bros.

We would appreciate it, however, if you would in no way involve us in any way or in any lawsuit. We have satisfied Granat Bros. by informing them we would not advertise Feature Lock any more."

Q. And they never had advertised Feature Lock prior to that time, had they, according to their own

(Testimony of Henry Peterson.)

letter? But they had advertised Dovetail Lock, isn't that a fact? A. Would you like to——

Q. Well, let's answer my question first, and then you can make the explanation.

A. Beg pardon?

Q. Now, to start off, were they only—they had only advertised [281] Dovetail Lock, isn't that correct? A. That is correct, yes.

Q. And they received a letter from Mellin & Hanscom, and they immediately sent it to Bastheim Company, sent it to you through them. Then they wrote to Mellin & Hanscom, and you were advised that they were discontinuing the Dovetail Lock advertisement, they had one ring? A. Right.

Q. Then they wrote before they had advertised Feature Lock and said this: "We would appreciate it, however, if you would in no way involve us in any way or in any lawsuit. We have satisfied Granat Bros. by informing them we would not advertise Feature Lock any more."

And they hadn't advertised yet, according to this letter?

A. That is correct. You scared them off from using Feature Lock rings, exactly, and that is what you have done to a lot of my customers throughout the country.

Q. Which ones?

A. Oh, gosh, there is so many of them. I don't have all the records here.

Q. Now, as a matter of fact, in all these letters

(Testimony of Henry Peterson.)

you have here from these dealers, they still advertise Feature Locks, don't they?

A. Because I have sworn to give them protection. That is the only way I could have existed in business. Without that letter [282] of protection I had to go out of business, actually.

Q. Now, as a matter of fact, most of these dealers didn't pertain to Feature Locks, isn't that so? They pertained to, let's say, one of the other locks that were hatched from this Feature Lock commencement, let's say, invisible Lock, isn't that so?

A. Those letters were hatched from Feature Lock, and all the other locks that you wrote to which was my product.

Q. Under a different trade-mark?

A. Under a different trade-mark.

Q. And not identified as "Feature Lock"?

A. It was very clearly identified by the manner of advertising their product, and the type of merchandise. No one could mistake it was a Feature Ring product under a different brand name.

Q. Well, let's see. I will show you—let's see if you can tell me that the ordinary observer can find anywhere——

A. I am talking about distributors now, not retailers, not the man in the street.

Q. And not the retailers?

A. I am talking about distributors and retailers, not the consuming public.

Q. Now, when you talked about—by the way,

(Testimony of Henry Peterson.)

during your—you brought up another letter here from David Sarkin. I am going through these one by one so that there will be no mistake or misunderstanding here as to what actually happened. What trade-mark did he advertise your rings under?

A. Kin-Lock.

Q. And all of the products which he sold under “Kin-Lock” were Feature Ring products, weren’t they, lock rings?

A. Feature Lock rings, supposedly.

Q. Now, in your testimony, when Mr. Groner took it in New York, you said this:

“Q. (By Mr. Groner): I hand you a photostat of the letter on the letterhead of Mellin & Hanscom, dated October 25, 1948, and addressed to David Sarkin, Inc. Have you any knowledge of that letter?

A. I have.

Q. How was it brought to your attention and when and by whom?

A. Mr. Sarkin himself called me and told me that he had received a letter from Mellin & Hanscom relative to the infringement on the trade-mark ‘Wed Lok’. And I asked him whether he would send me a copy of that letter, and he was very much disturbed about it. In fact, he is one in particular who advertised Kin-Lock continuously until he got this letter, and he definitely stopped advertising in trade magazines.

Mr. Mellin: Advertise what?

Mr. Groner: Kin-Lock. [284]

(Testimony of Henry Peterson.)

Mr. Mellin: Is that your trade-mark, or his?

The Witness: That is his trade-mark, but our product, and our sales fell off consequently."

Now, was that a true statement?

A. That's right.

Q. And if those same questions were asked you today, what would you answer?

A. The same thing.

Q. Now, as a matter of fact, you know, don't you, that Mr. David Sarkin at no time stopped advertising Kin-Locks? You know that as a fact, and you knew it at that time, when you gave this deposition, isn't that so? A. No, I didn't.

Q. That was taken in January, wasn't it, that deposition? And it was noticed in October? He got the—he received his notice in October?

Mr. Groner: Well, refer to the record. Don't ask the witness.

Mr. Mellin: Well, I will refer to it, then.

Q. "I hand you a photostat of a letter dated October 25, 1948" and "He called you up about it, so the conversation with Mr. Sarkin must have taken place shortly after receiving the letter, after October 25, 1948."

That would be a true account, wouldn't it?

A. That is correct. [285]

Q. Now, I show you the National Jeweler for the issue of November of 1948 and I call your attention to a full-page ad on page 43 thereof, which

(Testimony of Henry Peterson.)

advertises Kin-Lock, isn't that so, by David Sarkin (handing to witness)?

A. That's right.

Q. Now, would you say that that was advertised? You would say that, wouldn't you?

A. May I see that, please?

Q. Yes, sir. You sort of refused it.

A. I am sorry. (Examining.)

If I may, your Honor? David Sarkin used to advertise interlocking sets, and he took a whole page. He doesn't show one interlocking set. He doesn't advertise Kin-Lock in big words as he did before. But in very, very small letters, the words appear at the bottom. Here he puts "Kin-Lock", but only after I pleaded with him to use some sort of advertising on it, not to drop it completely.

Q. (By Mr. Mellin): Now, that Kin-Lock advertisement appears by the same person on the page which I have marked there. Will you give me the page, please, and a full——

A. Page 43. Again, instead of a full page of Feature Locks, he has everything else but Feature Locks in there. Have you got an ad in Feature Lock advertising by him?

Q. If you will be patient, Mr. Peterson.

Now, I will show you the Jewelers' Circular Keystone for—[286] page 34—for December 1948, in which he advertises Kin-Lock. Isn't that so? It is marked there in red (handing to witness).

A. There again, your Honor, he has done the

(Testimony of Henry Peterson.)

same thing. Heretofore he used to have a whole page devoted to nothing but interlocking sets and showing nothing but our product.

Q. Well, all we complained of was the trademark "Kin-Lock". Is it a greater infringement, do you think, to make it large rather than to make it small?

A. Certainly this is not prominent enough—it is inconspicuous, due to your threatening letter.

Q. In other words, our letter scared them into reducing the size of type?

A. Not only the size of type, but it took away the entire ad.

Q. Now, you will notice all of these ads are consistent with their products. That was page 34 for Jewelers' Circular Keystone for December '48.

I offer the three pages just identified, and just those three pages, in evidence.

The Clerk: As one exhibit?

Mr. Mellin: May I withdraw that offer until I put them all in as one?

The Court: Very well.

Q. (By Mr. Mellin): Now, I show you Jewelers' Circular Keystone for November 1948, which must have gone to press before November 1. And their letter was received the latter part of [287] October, so it would have been too late to change his ad, wouldn't it?

A. I don't know. I have changed ads within two or three days.

(Testimony of Henry Peterson.)

Q. I see. Now, I call your attention to page 36 of that one. Isn't that the same ad we have been looking at, of Kin-Lock? A. That is correct.

Q. That is page 36 of the November issue of the Jewelers' Circular Keystone. Now, I will show you February of the Jewelers' Circular Keystone and ask you, what does that show (handing to witness)?

A. That shows that this is an interlocking set marked "Kin-Lock".

Q. In large letters or very small ones?

A. In fairly large letters, much larger than what you showed me a little while ago. [288]

Q. As a matter of fact, they are quite large, aren't they, and written in script, too?

A. I don't know how they are written, but they are much larger.

Q. He wasn't frightened any more?

A. When was this?

Q. February of this year.

A. Of this year—that's correct. We gave him further assurances, and he went ahead and continued to advertise.

Q. As a matter of fact, though, he never did discontinue advertising Kin Locks?

A. In this manner he did (indicating), in prominent parts of the ad he did.

Mr. Groner: May the record show that that advertisement came after the New York testimony to which my brother has adverted?

Mr. Mellin: That is page 34 of February 1949.

(Testimony of Henry Peterson.)

And here is one—did I have the November one in?

Q. That November issue of *National Jeweler* has also a full page ad by Mr. Sarkin, or David R. Sarkin, Inc. of Kin Lock advertisement; that is so (handing to witness)?

A. That is correct, that is right after you sent him the letters, that is right.

Q. It is still there?

A. I can see it.

Mr. Mellin: So I offer the pages which I have mentioned and which the witness has identified in the various publications in [289] evidence as Plaintiff's next in order, as one exhibit, your Honor.

The Court: Very well.

The Clerk: TTT.

(Pages of magazines referred to above of Feature Lock ads, were thereupon received in evidence and marked Plaintiff's Exhibit TTT.)

Q. (By Mr. Mellin): So therefore your testimony which you gave in January, that he definitely stopped advertising Kin Lock was incorrect, wasn't it?

Mr. Groner: May it please your Honor, I think the testimony has to be taken in its full context. Certainly the witness was speaking of using his product in association with the word "Kin Lock."

Q. (By Mr. Mellin): Now I will show you the letter and I would like to read it to you, and I ask

(Testimony of Henry Peterson.)

you if it has anything to do with your product or any particular kind of ring:

“Our client, Granat Bros., has called our attention to the fact that you are advertising a combination wedding and engagement ring under the trademark ‘Kin Lock’.

“Our client feels that this use by you of the trademark ‘Kin Lock’ constitutes an infringement of our client’s above trademark registrations, and also constitutes unfair competition in trade.

“We would appreciate it very much if you would [290] consider this matter and promptly advise us what position you will assume inasmuch as our client desires to avoid any unnecessary litigation.”

That is Defendant’s Exhibit 28.

Now that solely complains of the use of the trademark “Kin Lock”, doesn’t it, and nothing else?

A. That’s right.

Q. Thank you.

A. Can I qualify that statement?

Q. Well, if it is in error in any way.

A. It is not in error, but I might say that most of the interlocking sets on the market were ours, and under all these different names you couldn’t help but point all these different letters in my direction, to my customers.

Q. As a matter of fact, the majority of your rings are sold under trademarks other than “Feature Lock”, aren’t there, your locking rings?

(Testimony of Henry Peterson.)

A. I wouldn't say that.

Q. You don't know? You don't have the information that they are not, most of your dealers sell them under different names, don't they?

A. I don't have the information. I couldn't answer that intelligently.

Q. In fact, what you did was to sell your Feature Lock rings, and then based on that, they all came out with their own, by [291] that encouragement, they all came out with their own "lock" trademark, such as "Eterna Lock", "Love Lock", "Bridalok" and some others which I will show you later; all selling your products. And when you spoke of the newspaper advertisements, those were all collected for you because they advertised your products, isn't that so? A. That is correct.

Q. Now isn't it a fact that practically all of your dealers in Feature Lock rings adopted—that is, the major ones—a trademark other than "Feature Lock" for their product, but they used a "lock" on the end of it? Now I will point some out to you. What about this? Here is "David Sarkin". He is a distributor, isn't he? A. Yes.

Q. And he adopted "Kin Lock". When you said you didn't sell retail, to retailers, you didn't neglect to mention that you do so occasionally, to large chains such as Zale's?

Mr. Groner: The witness so testified, Mr. Mellin.

Mr. Mellin: I just want to clear it up.

A. To us they are distributors. Zale's have their own wholesale office in New York.

(Testimony of Henry Peterson.)

Q. I didn't understand that, not being a jeweler.

A. Chain stores are in the same category.

Q. Now one of your distributors was Dreyfuss of New York. They sold your products, didn't they? [292]

A. That's right, sir.

Q. And that is a large concern, isn't it?

A. Fairly large.

Q. And they adopted for your product the trade name or trade marked "Eterna Lock", isn't that correct?

A. That's correct.

Q. And it is still being advertised today, isn't it?

A. I don't know. I don't think it is. There is a man that started out with a tremendous advertising campaign, and stopped, just because of your threatening letter, and he has lost thousands and thousands of dollars' worth of business, and consequently I have lost it.

Q. Now as a matter of fact—I will skip that for a moment, your Honor. Now then you also—now yesterday a very curious thing, at least curious to me, occurred. You said you were "thumbing" through these trademarks, and I was interested to know what your thumbing through—what it was that you were thumbing through.

A. It is the policy of Feature Ring Co.—

Mr. Groner: May it please your Honor, that is just a layman's expression for having a search made and having an opinion rendered on the search.

The Court: Yes.

(Testimony of Henry Peterson.)

Mr. Groner: Counsel, I think, knows that.

Mr. Mellin: No, I thought maybe you were thumbing through one of these alleged directories or something. [293]

The Witness: Directories?

Mr. Mellin: Well, something that is supposed to give you various jeweler's trademarks.

Q. You were thumbing through, then, the copies of registrations for wedding rings which might have the word "lock" in conjunction with it. And you said then, when you were—during your testimony—that you found at that time, which was before you manufactured Feature Lock—that is so? I mean Feature Lock interlocking rings, or whatever they are?

A. Not before we had the idea of coming out with them.

Q. Oh, I am not questioning that at all. I mean before that, before you had commercialized it?

A. Before we advertised it.

Q. And as I recall it, you said that you found two trademarks which were already used, or in use for locking rings and sets, and one of them was "Bridalok", is that correct?

A. I believe so, I am not sure.

Q. And the other one you said was "Love Lock", and the third one was "Wed Lok"?

A. I may have said that. I am not quite sure, but I think those are the names I saw.

Q. So that you are not—By the way, just to

(Testimony of Henry Peterson.)

clear that up, that Eterna Lock matter, I show you this, that as late as January 14, 1949, Friday, January 21, 1949, and July 25, 1948—I beg your pardon. Withdraw that. I thought it was '49. [294]

But it was in the Poughkeepsie New Yorker and the other one was the Adrian Daily Telegram, in Michigan, for January 14, January 21—these are advertising “Eterna Lock” (handing to witness)?

A. Is that Julius Dreyfuss' advertising?

Q. Well, they would be his customers, wouldn't they?

A. He may have had the mats sent to him months ago, before they withdrew their advertising campaign.

Mr. Groner: Don't deal in speculation. You don't know the answer?

The Witness: But certainly it is not the advertising of my customer.

Q. (By Mr. Mellin): Well, you have been so intermingling your customers with your distributors, all your customers, that I don't know the difference. You call Jack Farrar a customer, and he wasn't a customer. He was a “Dovetail Lock” customer, wasn't he?

A. He was a customer of my customer. All retailers are customers of my customers.

Q. Now I will take up that “Love Lock” and “Bridalok” when I can find your exact testimony.

Mr. Naylor: It is page 222, Mr. Mellin, if you want it.

(Testimony of Henry Peterson.)

Mr. Mellin: Thank you. I see it is almost that time.

Q. Now you said this:

“I felt that we would be too similar to what other people were using. Some were using ‘Love Lock’, some [295] were using ‘Bridalok’, and some were—there were Granat products which used ‘Wed Lok’.”

Now that was in the process of adopting your trade name “Feature Lock”, which you had commercialized? A. Yes.

Q. Now as a matter of fact, those two trademarks weren’t used in conjunction with locking rings until after you were selling your Feature Lock rings, and they were applied to Feature Lock rings, isn’t that true? A. Love Lock?

Q. Love Lock and Bridalok.

A. They were applied to some of my rings after I came out with them, and they were also used with other products before I came out with them.

Q. Well, just to refresh your recollection, I will show you the Florence Morning News, Florence, S. C., for the Jewel Shop—and by the way, that was one of the letters that you have in here that were notified that “Bridalok” was an infringement of “Wed Lok”, the same notice as we gave, and which you referred, which was referred to you for security of some sort. And that is dated August

(Testimony of Henry Peterson.)

21, 1948 (handing to witness). I ask you if those aren't your rings, displayed in that ad?

Mr. Groner: May I have the date?

The Witness: August 22, 1948.

A. They were, yes. They are. [296]

Q. And the trade-mark is "Bridalok" isn't it?

A. "Wedding bells"—"Wedding bells for miraculous Bridalok."

Q. And the "Bridalok" is prominently displayed in a trade-mark sense, isn't it?

A. Right. No, I beg to differ with you. The trade-mark is "Wedding Bells," and "Bridalok" is descriptive of the item.

Mr. Groner: Put the thing in evidence and let the court decide.

Q. (By Mr. Mellin): As a matter of fact, before "Bridalok" was the trade name, we complained of, and that was the trade name it was known as, isn't it?

A. There is another concern in New York who have the registration mark of "Bridalok," or use the name "Bridalok." They used it before we came out and some people didn't know they had access to that name, and they used it.

Q. As a matter of fact, the Jewel Box still uses it, don't they?

A. Possibly so. Maybe they have been given permission to use it. In fact, I think they were.

Q. You have got a good imagination.

Mr. Groner: Well, if it please your Honor—

(Testimony of Henry Peterson.)

A. I can bring you proof of that.

Q. I hand you up a page from the Fall River Herald News, Fall River, Mass., for July 15, 1948, and that is your mat in the lower lefthand corner, isn't it?

A. That's correct. [297]

Q. And what is the trade-mark adopted there for your rings?

A. Love Lock.

Mr. Groner: Maybe you should offer those.

The Witness: That is owned by another New York concern too, and was published before we came out with "Feature Lock."

(Whereupon a recess was taken until 2:00 o'clock p.m., the same date.) [297-a]

Afternoon Session—2:00 p.m.

HENRY PETERSON

resumed.

Cross-Examination

(Continued)

Mr. Mellin: At this time I would like to offer in evidence the tear sheets of the Florence Morning News, Florence, South Carolina, identified by the witness, showing "Bridal Set"; the Fall River, Massachusetts Herald for Thursday, July 15, 1948 advertising "Love-Lock." I should also like to offer in evidence the tear sheet of the Poughkeepsie New Yorker of Friday, July 1, 1948, and the tear sheet of the Adrian Daily Telegram of January 14, 1949

(Testimony of Henry Peterson.)

showing the trade-mark "Eterna Lock," as next in order.

(The tear sheets referred to were marked Plaintiff's Exhibit VVV.)

Q. (By Mr. Mellin): Now, as I understand it, your locking ring was sold by the trade and distributors under the name of "Feature Lock," "Eterna Lock," "Bridalok"—how about "Rhapsody Lock"? A. Yes, sir.

Q. And "Magnolia Lock"— A. Yes, sir.

Q. And that is Friedmann's dealers?

A. I believe so.

Q. And the "Love-Lock" that we just called your attention to? [298] A. Yes, sir.

Q. Do you recall—and "Invisible Lock"?

A. Yes, sir.

Q. And "Kin-lock"? A. Yes, sir.

Q. Do you recall any others?

A. "Tru Lock."

Q. T-r-u L-o-c-k. That was Kay dealers?

A. Yes, sir.

Q. Any others? How about "Cupid Lock"?

A. The name may have been used on our merchandise, but I don't know—I mean, I haven't sold them to anybody that directly told me they were going to use that name. There may be other names, but at the moment I just can't think of any.

Q. Now, the letter from Joseph Gardner to Zale Jewelers, Defendants' Exhibit 19, that referred to

(Testimony of Henry Peterson.)

“Feature Lok,” L-o-k, is that correct, complaining of “Feature Lok,” L-o-k? You recall there was one advertisement from Zale’s with that particular spelling?

A. Yes, there was one advertisement.

Q. Now, Zale’s Jewelers then ceased to advertise Feature Lock rings, did they? A. They have.

Q. They have?

A. I believe so. I know they haven’t purchased any more since [299] that time.

Q. I show you tear sheets of the Austin American, Austin, Texas, of October 5, with the Zale’s ad of Feature Lock.

A. At that time they may have continued. It was slightly after.

Q. And October 5 is another Zale’s Feature Lock?

A. They kept on advertising until they sold them all, and they wouldn’t continue to buy any more, and then they stopped advertising.

Q. I see.

May I offer the ads in evidence?

Mr. Groner: You note that the “Lock” there is spelled in the correct way and the error of the first advertisement has been corrected?

Mr. Mellin: Let’s not say I will stipulate the first is an error, but it has been corrected.

(The ads referred to were received in evidence and marked Plaintiff’s Exhibit WWW.)

Q. (By Mr. Mellin): And the second one, which

(Testimony of Henry Peterson.)

is Defendants' Exhibit 20, dated July 16, 1948, that is for Feature Lock, to S. H. Friend, who is one of the defendants here? A. Yes, sir.

Q. And you recall this suit was brought shortly after, in August, I think, the first part of August 1948, within a couple of weeks. Now, the Morgan—how many distributors do you have [300] in San Francisco? A. About four, I think.

Q. And the S. H. Friend Company has ceased advertising Feature Lock because of the suit or this notification? A. I don't believe they have.

Q. In fact, you are certain?

A. I am pretty certain.

Q. Now, Morgan & Allen, which is Exhibit 21, have they ceased selling your ring?

A. They haven't ceased selling it, but their amount sold has been curtailed greatly.

Q. Well, the amount sold in all jewelry has to some degree in the last few months, due to economic conditions, reduced, hasn't it?

A. Not last year.

Q. Now, the Perel, Defendants' Exhibit 22, they haven't ceased advertising your Feature Lock ring, have they?

A. I don't know. I gave them the assurance that they would be protected if they did.

Q. Just so that you can be certain about it, Mr. Peterson, I show you tear sheet of September 30, 1948, and their name and the dealer's name on it.

A. This one ad in September?

(Testimony of Henry Peterson.)

Q. Yes. A. That doesn't mean very much.

Q. But it was there?

A. Yes, I expect it to be there.

Mr. Mellin: May I offer that tear sheet in evidence as the next in order.

(The tear sheet referred to was received in evidence and marked Plaintiff's Exhibit XXX.)

Q. (By Mr. Mellin): Now, how about D. C. Percival Company, Inc. of Boston, Massachusetts—that is Defendants' Exhibit 23 which you offered. They also use Feature Lock, and they haven't discontinued the sale or advertisement, is that correct?

A. I don't know. All I know is I gave them the assurance that if they would continue to sell them and advertise them we would protect them to the best of our ability.

Q. And they proceeded in accordance with that?

A. But their amount of orders and requests for them have fallen since that time. They haven't pushed them.

Q. Now, the Barrett-Davis letter which is Defendants' Exhibit 24, that refers not to Feature Lock, does it, but it refers to Invisible Lock?

A. That is correct.

Q. And there has since been a great deal of advertising of Invisible Lock in the newspapers?

A. There might be, sir.

Q. There is one in evidence, at least, that I put in. So that pertains to Invisible Lock. Now, the

(Testimony of Henry Peterson.)

Julius Dreyfuss one [302] was Eterna Lock, not Feature Lock, isn't that right?

A. That is right, sir.

Q. That is Exhibit 26. And Exhibit 27, calling attention to the letter of Mellin and Hanscom, that related not to Feature Lock but to Magnolia Lock?

A. That is correct.

Q. And to your knowledge have they discontinued advertisement of Magnolia Lock?

A. I don't know. The volume has fallen down considerably.

Q. And that is the situation you are in with a lot of other merchants. And with respect to Sarkin, Defendants' Exhibit 28, that was Kin-Lock, that wasn't Feature Lock? A. Kin-Lock, yes.

Q. As to the Defendants' Exhibit 29, Ed Kain & Company, do you know what they were sold under?

A. Feature Lock. That is the one that was canceled out because of your letter, is that correct?

Q. Let's say it was canceled, Mr. Peterson, according to the information we have. Now, then, in the taking of your deposition I asked you if you made a strenuous effort to locate any more of these—in your files any other like correspondence, and you told me that you had searched it very carefully, and these exhibits I have just been speaking of are all that you could locate. Is that still correct?

A. If there are any more, I don't know at this moment. [303]

(Testimony of Henry Peterson.)

Q. I see. Now, with respect to customer or newspaper advertising of Feature Lock, as I gathered from your statement this morning on direct you testified that the volume of tear sheets that you had were tremendous. A. That is right.

Q. And you said something with reference to about a million dollars.

A. I ventured a guess at it.

Q. That would be the cost of that advertising?

A. That is right.

Q. For what period did you place that?

A. Since the marketing of Feature Locks or merchandise that were sold under different names that were ours.

Q. Now, you were speaking of Feature Lock, is that correct?

A. Feature Lock and all other brand names under our merchandise.

Q. Which were advertising also under Feature Lock?

A. No, under different names, but our products.

Q. All right. Now, let's confine ourselves to Feature Lock. How much would you say was the dealers' advertising under that? I misunderstood you, Mr. Peterson. I am sorry. I thought you said there was a million dollars worth of dealer advertising under Feature Lock.

A. There might have been.

Q. For what months?

(Testimony of Henry Peterson.)

A. Since about March. Just Feature Locks alone, you are talking [304] about now?

Q. Yes.

A. I would say it came out in about May.

Mr. Groner: 1948?

The Witness: 1948.

Mr. Mellin: Yes.

Q. And what would you say the total dealer cost of advertising would be, say, to the end of January of 1949?

The Court: Feature Lock?

Mr. Mellin: Feature Lock.

A. To the end of January 1949?

Q. Yes. A. That is a very hard guess.

Q. Well, you guessed it a million dollars. Those figures are easy. Come on.

A. Well, if you had the file of tear sheets that I have, a guess of a million dollars—you would venture a guess of a million dollars very easily. Now, I didn't particularly separate them as to which were Feature Locks or which were Eterna Locks or which was someone else's lock; all I was interested in was selling our products, and our customers are entitled to use whatever name he chooses for it. If he wanted to use Feature Lock he could use Feature Lock.

Q. Now, as long as you are going to give a guess of a million dollars, I want you to guess how much was Feature Lock [305] advertisement during that period. You gave a million for the total. Would you say 50 per cent of that would be Feature Lock?

(Testimony of Henry Peterson.)

A. It might be.

Q. Would you think that was low or high?

A. That is a very tough question, Mr. Mellin.

Q. Would you say 5 per cent?

A. Oh, it is more than that.

Q. It would be more than 5?

A. I would venture a guess between $33\frac{1}{3}$ —around $33\frac{1}{3}$ to 50 per cent.

Q. So that would be about \$350,000?

A. To a half million if the grand total was one million.

Q. Well, now, let's leave the grand total out. Would you say that your estimates, your best estimate of Feature Lock newspaper advertising from May of 1948 to the end of January 1949 would be as much as a quarter of a million dollars or less?

A. That is very hard for me to answer.

Q. Well, how did you arrive at this guess of a million dollars? Let's use the same basis.

A. Well, I took all the tear sheets that I have got, piled them up on my desk, and as people would come in, people who knew more about advertising than I did, I asked them what certain ads cost in certain towns, they gave me an approximate idea, and many times we spoke about the gross total cost of those ads, and people who knew more than I did would say there was at least [306] a million dollars worth of advertising there, if not a whole lot more.

Q. Would you say that the Feature Lock ads would account for 25 per cent of those ads?

(Testimony of Henry Peterson.)

A. I would venture a guess at that as a bare minimum.

Q. As a bare minimum? A. Yes.

Q. So that would be a quarter of a million dollars?

A. If there were a million dollars worth total, yes.

Q. That is your estimate, there was a million dollars total? A. I guessed at that estimate.

Q. All right. Would you divide that more or less equally between the months—

Mr. Groner: If it please your Honor, that is speculative—

Mr. Mellin: I object to counsel—

The Witness: I am not a mathematician. I am not a mathematician. I am trying to do the best I can.

The Court: I think it is proper cross-examination. Go ahead.

A. I am trying to do the best I can with the mental picture at the moment. It gained momentum in the fall part of the year.

Q. (By Mr. Mellin): So it would be greater in the fall than it would be in the middle of the year?

Mr. Groner: He said fore part of the year.

Mr. Mellin: I thought he said "fall"—didn't you, f-a-l-l? [307]

A. F-a-l-l.

Q. That is what I understood.

A. In the latter part of the year toward the Christmas season.

(Testimony of Henry Peterson.)

Q. It gained momentum?

A. It would gain momentum. In the beginning, when they naturally adjusted themselves as to how they would advertise, and as the thing progressed they did more of it.

Q. So we are all talking about the same thing. You would estimate that the total dealer advertising from the end of May to the end of January 1949 would be approximately a million dollars, and you estimate that the Feature Lock itself would be at least 25 per cent of that total; that would be your best estimate? Is that the basis that we are going on?

A. I think so. It is a pretty hard question for me to answer.

Q. And you think that would build up between the middle of the year or the fall and the Christmas season?

A. Yes.

Q. Now, if I stated that the Feature Lock advertising in all of the newspapers in the United States, the cost of it in the month of September 1948 was \$7800, would you say that was far wrong?

A. I wouldn't know.

Q. If I told you my information is that in October of 1948 the total cost of Feature Lock advertising in every paper of the United States was \$8541, would you say that I was wrong? [308]

A. I wouldn't know. I don't know how you base your figures.

Q. And if I said that in the month of November

(Testimony of Henry Peterson.)

1948 that the total advertising in every newspaper in the United States, dealer advertising on Feature Lock, was \$4,371, would you say I was in error?

A. I wouldn't know.

Q. And if I told you that in the month of December 1948 that the total cost of Feature Lock newspaper advertising by every dealer in the United States was \$3,843, making a total for those months of \$24,555, would you say that I was far wrong?

A. I wouldn't know.

Q. Now, that is less than 10 per cent of your estimate.

A. You have only given me a few months.

Q. All right. Now, in the month of January 1949 I will tell you that the cost of Feature Lock advertising in every paper in the United States by dealers was \$3,281, so that the total figure for September, October, November and December 1948 and January 1949 was \$27,836. Would you say that is a correct figure?

A. I would not say it is correct, no. How about June, July and August?

Q. I am just speaking about those particular months. Would you say that would be in line rather than the million dollar figure?

Mr. Groner: If your Honor please, the witness is not called [309] upon to answer a question like that. There is no foundation for it.

The Court: Well, he made an estimate or a guess. I think it is proper.

(Testimony of Henry Peterson.)

Q. (By Mr. Mellin): Now, then, you would say that your estimate of \$250,000 for newspaper advertisement of Feature Lock would be much, much closer than, say, than \$30,000?

A. I would say the overall advertising of my product——

Q. That is a million dollars.

A. ——is quite large, approximately a million dollars. I testified before that I didn't break it down to the individual names of my product. I just gathered all the tear sheets that came in, and I know there are a lot more I haven't got. You brought out some today. I never separated them. It is almost impossible for me to tell you what the correct figure would be for each name.

Q. Then your estimate of approximately \$250,000 for that period in advertising of Feature Lock alone is just as good and just as close an estimate as you can make, and it is based in the same consideration that you based the overall one million dollar cost?

A. Not necessarily, Mr. Mellin, not necessarily.

Q. In other words, the million dollars—you just picked that out of the air, didn't you?

A. I wouldn't say I picked it out of the air. It may be more, [310] it may be less.

Q. Now, you testified yesterday—by the way—strike that, will you? By the way, you were here when counsel argued the motion for dismissal and made some reference to the Granat Bros. attempting

(Testimony of Henry Peterson.)

to monopolize the locking ring business; you heard him make some reference to that? You recall that?

A. I think so.

Q. Yes. Now, as a matter of fact, there are a considerable number of other locking rings on the market besides Feature Lock ring and Granat locking ring which are advertised under names which do not include the word "lock," isn't that so?

A. No.

Q. You say there are none?

A. I say there are other products with an interlocking feature that are advertised with the word "lock" in it.

Q. Well, let's answer the question my way: Aren't there a number of them advertised that have a trade-mark which does not include the word "lock"? A. Some.

Q. How many would you say? You are familiar with this whole business, aren't you?

A. Oh, yes.

Q. You keep close track of it?

A. Well, as close as I can. I am an individual, I am in my factory. I can't be all over at the same time. I give you my [311] best answer. There are some; how many, I don't know.

Q. And there are some quite successful ones, aren't there?

A. I wouldn't say. I wouldn't say there are any that are quite successful.

Q. None but Feature Lock

(Testimony of Henry Peterson.)

A. That is correct, sir; that is definitely correct.

Q. Now, in fact, your rings are sometimes advertised without the word "lock" in it and with a definite trade-mark, aren't they? A. They are.

Q. Isn't the distributor who is distributing them successful?

A. In his own particular branch of the industry, yes.

Q. He would be more successful if he had incorporated in the name, "lock"?

A. Not necessarily.

Q. I will show you the Salisbury Times of Salisbury, Maryland for Thursday evening, January 27, 1949, and I call your attention to the advertisement of Russell P. White, and I ask you if that is not a set of your locking rings.

A. That is a set of our locking rings.

Q. And the trade-mark is solely, "Rhapsody," isn't it?

A. "Rhapsody Rings with the locking feature."

Q. "With the locking feature" is an explanatory phrase below it, isn't it? A. That is correct.

Mr. Mellin: Has the Court seen it? (Exhibiting to Court.) [312]

Q. And I show you another locking set, or—pardon me. I will show you the tear sheet of the Concord Tribune of Concord, South Carolina of Sunday, January 16, 1949, and I call your attention to the ad in the lower left-hand corner and ask you if that is not a set of locking rings.

(Testimony of Henry Peterson.)

A. That is a set of locking rings.

Q. What is the trade-mark there?

A. "Together," but it isn't ours.

Q. I am not suggesting that, Mr. Peterson.

A. Oh, I am sorry.

Q. You are familiar with that? A. I am.

Q. Then I show you a tear sheet of the Morning Herald, Uniontown, Pennsylvania of Thursday, December 9, 1948, and ask you—I call your attention to a Hunt's ad and ask you if that is not a locking set and if it is your ring.

A. It is our rings.

Q. What is the trade-mark there?

A. "Bridal Set rings that won't shift or 'twist."

Q. In other words, it is also explanatory that they lock together, in the body of the advertisement?

A. I don't see the mention of the word "lock" in this particular ad.

Q. But it describes the same function. I show you the Charlestown, Illinois Daily—you are familiar with that ring, aren't [313] you, "Bridal Set"?

A. Yes, these are ours, yes, sir.

Q. And I show you the Charlestown, Illinois Daily Courier for September 24, 1948 and call your attention to an ad there of locking set of rings, and those are known by the name of Priscilla, aren't they? A. That is correct.

Q. And it describes below interlocking wedding and engagement rings? A. That is right.

Q. And I show you another ad of Sunday morn-

(Testimony of Henry Peterson.)

ing, February 6, 1949, and call your attention to the ad of the Stout Jewelry and ask you if that is not a set of locking rings as it says there?

A. That is right.

Q. And the trade-mark there is——

A. “Prism Lite,” “Stay Right.” [314]

Q. So then, as a matter of fact——

Mr. Mellin: May we offer these papers that I have just identified, as Plaintiff’s next in order?

Mr. Groner: I have no objection to make, your Honor, but I would suggest that they are totally irrelevant.

The Clerk: YYY.

(Newspaper clippings referred to above were thereupon received in evidence and marked Plaintiff’s Exhibit YYY.)

Q. (By Mr. Mellin): Then, as a matter of fact, Mr. Peterson, as far as you know there has been no attempt to disturb those by Granat Bros., or that the Granat Bros. have any exclusive or any partly exclusive possession of the locking ring field, is there?

A. I didn’t get any letters of complaint from them, if that is what you mean.

Q. I guess I didn’t hear you.

A. I didn’t get any of your letters complaining of infringement from these people.

Q. No, I don’t mean that, Mr. Peterson. I didn’t think my question—I mean, there is no complaint

(Testimony of Henry Peterson.)

on your part, or no basis for a complaint on your part, that there was any attempted monopolization on the part of Granat Bros. of the locking ring field, such as counsel suggested in his argument yesterday?

A. I don't recall that argument yesterday, or my counsel's remarks, to be very honest with you.

Q. All right. Now, during your direct examination, Mr. Peterson, you testified that you did some research work or some development work or something in connection with locking rings for about six months prior to the time that you actually commenced to build them?

A. Six years.

Q. Six years. I beg your pardon. I didn't intend to misstate that.

A. Six years.

Q. And that would bring it back to 1942?

A. Yes, sir.

Q. And during that six year period, were you more or less constantly attempting to develop for commercial use this type of ring?

A. Not constantly—periodically.

Q. Well, you mean rather frequent, in frequent periods or recurrent?

A. Not frequent, infrequent.

Q. What would *be* the periods in between be?

A. Well, no specific time. It was just a case of when we had some free time in which to experiment.

Q. But I mean, it was sort of constantly with you, it was a goal to drive toward, to get this ring to put on the market during that period?

(Testimony of Henry Peterson.)

A. Yes, sir, it was a natural reaction—— [316]

Q. Now you also testified that during some portion of that period you used to meet with distributors in connection with the sales of your other products?

A. That's right.

Q. And naturally, at those meetings you would discuss the ring business, wouldn't you?

A. Yes, sir.

Q. And during any of those meetings, did any of the distributors at any time, were there any conversations which came up with respect to Wed Lok?

A. Not of Wed Lok.

Q. Not of Wed Lok? A. No.

Q. At any time during that six year period, Mr. Peterson, did you make any attempt to see what was on the market with respect to locking rings, say, in 1947?

A. Made no attempt.

Mr. Groner: The defendant wouldn't have found Wed Lok at that time, anyway, Mr. Mellin.

Mr. Mellin: Well then, you understand the English language a little differently than I do, Mr. Groner.

The Witness: We made no attempt at all.

Q. (By Mr. Mellin): You didn't even see what was on the market that might be in competition with the rings that you were coming out with? [317]

A. No.

Q. And up until——

A. I didn't know—excuse me. I didn't even know that Granat Bros. had an interlocking set.

(Testimony of Henry Peterson.)

Q. Up until three months before you came out with it? A. Several months before.

Q. That would be——

A. Six months, five, six, seven, eight months—I mean, around that time.

Q. Is this estimate just about as accurate as your estimate of a million dollars for retail advertisement in newspapers?

A. If I had the facilities that you have for checking figures, I would be more precise.

Q. I am going to let you be more precise before the day is over, Mr. Peterson.

A. All right. I am giving you to the best of my knowledge the figures that I would venture a guess at. It is not deliberate misinterpretation of any kind.

Q. I am not accusing you of that.

A. If I have made a mistake in my calculations, it has been honest.

Q. Now then, it is still your testimony that you had never heard of Wed Lok before the three months before—four, five, or six months—before May of 1948? A. Yes. [318]

Q. Now you said that there was a demand by the public for such a ring. That is, a locking ring. And that demand must have reached you through various distributors or various parties, over various parts of the country?

A. That is correct.

Q. And yet there was no—as a matter of fact,

(Testimony of Henry Peterson.)

wasn't there a demand for distributors and dealers who were unable to obtain, because of their exclusive dealer policy, Wed Lok rings?

A. No.

Q. And to your knowledge, that that is so?

A. No, that is not so. During the war they didn't have to have anything but diamond rings of any kind, because there was a shortage of them. And no matter what we made.

Q. I am talking about 1948.

A. '48—we were out with it by that time.

Q. You were out with it in May of '48?

A. We showed the progress of interlocking sets six years before that to our customers, who wanted to buy it then; but we didn't want to market it.

Q. Now, you know of your own knowledge, don't you, your knowledge of the business, that the Granat policy is only to select a certain few number of jewelry stores in each town to sell to?

A. I don't know what the Granat Bros.' policy is, or was.

Q. I mean, your distributor here, Mr. Friend—didn't he so inform you, that that has been the policy here in San Francisco [319] and in California?

A. No, there is no reason—I never asked him what the policy was.

Q. So you don't know that that was a fact during that period?

(Testimony of Henry Peterson.)

A. I didn't even ask him. It was of no material value to me. We have our own policies.

Q. Now isn't it a fact that distributors such as S. H. Friend, who couldn't handle the Wed Lok line—isn't it a fact that they wanted and came to you and said, "We have to get something to compete with Granat Bros. in this business?"

A. It is definitely not a fact, and I emphasize it.

Q. Now, during the taking of your deposition, you testified that it was in effect—I don't want to misquote you, but as I recall it, it was in effect—that you felt it was absolutely necessary to sell your product that you identify the lock part of it in the trademark? Did you testify to that, in substance, or am I in error?

A. I don't remember what I testified. Whatever I said there was the gospel truth. Whatever I said is the truth, and I say the same thing now. I don't change it.

Q. Well, let's get what your testimony is now. Is it necessary to sell your rings that you have the word "lock" in there?

A. I don't know what is necessary and what is not necessary.

Q. Now those ads I showed you use the term "Priscilla," for example, the trademark "Priscilla," and then it has underneath that, "These rings interlock"; isn't that sufficiently informative to your buying public that the rings interlock, without—— [320]

(Testimony of Henry Peterson.)

Mr. Groner: May it please your Honor, I suggest the entire irrelevance of that; merely because someone can sell without using a word doesn't indicate that another must abdicate the use of that word. I don't see any possible point in this line of questioning.

The Court: Overruled.

Mr. Mellin: I guess I only got a part of the question out. Would you read it, Mr. Reporter?

(Question read.)

Mr. Mellin (Continuing): —without using the word "lock," such as in "Feature Lock," "True Lock," "Kin Lock," and so on?

A. Mr. Mellin, for years we have been selling rings known as "Feature Rings." For 15 years. We built a fine reputation on selling "Feature Rings" for that period of time, and when we came out with an interlocking set, to distinguish those from our regular merchandise we took the same name, "Feature," and we added the descriptive word "lock" to it, and called them "Feature Lock Rings" instead of "Feature Rings."

Q. As a matter of fact, no advertisement that has been put in evidence here shows any of the Feature Ring Co.'s rings except locking rings, isn't that correct?

A. That is correct. We never did any advertising before we came out with interlocking sets. It wasn't necessary.

(Testimony of Henry Peterson.)

Q. You never advertised Feature Rings as such?

A. It was never necessary. [321]

Q. Now, as I understand it, or correct me if I am in error, when you chose the name "Feature Lock," and selected it, you had seen the trademark "Wed Lok" at that time?

A. At the time we chose "Feature Lock," yes, sir.

Q. And you didn't think at that time that it could be conflicting?

A. I honestly did not.

Q. Now, by the way, you are in the jewelry business, you know; the J. R. Woods & Sons?

A. I do.

Q. And when you hear their trademark, which is "Art-Carve," you know that trademark, don't you?

A. I do.

Q. And that means to you, "J. R. Woods & Sons"?

A. Yes, it does.

Q. And "Orange Blossom" means what company?

A. Traub, I believe. I am not very familiar with that.

Q. Well, when you hear "Art-Carve," you know that is J. R. Woods?

A. I do.

Q. And now when you hear "Wed Lok," you know that is Granat, isn't that so?

A. No, sir, you have not sold your merchandise under the name "Wed Lok," but "Art-Carve"

(Testimony of Henry Peterson.)

does. You only sell an interlocking set under that name.

Mr. Mellin: That is all.

Mr. Groner: No redirect. That is all.

(Witness excused.) [322]

LAWRENCE McCUNE

called on behalf of the defendant, sworn.

The Clerk: What is your full name, please?

A. Lawrence McCune, M-c-C-u-n-e.

Direct Examination

By Mr. Groner:

Q. Mr. McCune, you are an attorney at law?

A. I am.

Q. And you are general counsel for the firm of Morgan & Allen?

A. I am.

Q. And you are also secretary of that company?

A. I am.

Q. And you are counsel for the Northern California Wholesale Jewelers' Association?

A. I am.

Q. Now I hand you a photostat of a letter, Defendant's Exhibit 21, addressed to Morgan & Allen on the letterhead of Mellin & Hanscom (handing to witness). Have you seen that before?

A. I have.

Q. Was it handed to you in the regular course of your duties as counsel for Morgan & Allen?

A. It was.

(Testimony of Lawrence McCune.)

Q. Did you respond to it? A. I did.

Q. Is that your response attached to the letter I have adverted [323] to?

A. Well, that is——

Q. Or a copy of it?

A. No, this is the original. The response to this letter was made by telephone to Mr. Mellin, and after a telephone conversation with him, I sent this letter to Feature Ring Co.

Q. I see. And that is the letter which you sent?

A. That is the letter.

Q. Now, as a result of the receipt of this letter by Morgan & Allen, did you advise them with respect to their future course of action?

A. I did.

Q. And would you mind stating—I assume there is no privilege claim here—would you mind stating the substance of your advice to them?

A. Well, I advised them not to do any further advertising until the matter was cleared up, as a matter of precaution.

Q. Now, as secretary of the Morgan & Allen firm, or as counsel for that concern, or as counsel for the Northern California Wholesale Jewelers' Association, do you have rather close contact with the jewelers hereabout?

A. Well, that is—I see the Wholesale Jewelers frequently.

Q. Have you in the course of the last year at any time acquired any knowledge of any confusion

(Testimony of Lawrence McCune.)

between the product of the defendant "Feature Lock" or the Feature Ring Co., known under [324] the name of "Feature Lock", and the product of plaintiff, known as "Wed Lok"?

A. I have not.

Mr. Groner: You may question the witness.

Mr. Mellin: No cross-examination.

(Witness excused.)

LEONARD BLOCH

called on behalf of the defendant, sworn.

The Clerk: What is your full name, please?

A. Leonard Bloch, B-l-o-c-h.

Direct Examination

By Mr. Naylor:

Q. Mr. Bloch, will you please state your full name, residence and occupation to the court?

A. Leonard Bloch, 657 Mission Street, San Francisco, partner and friend of S. H. Friend, wholesale jewelers.

Q. S. H. Friend is one of the defendants in this action, is it not? A. That's right.

Q. How long, Mr. Bloch, have you been in the jewelry business?

A. Since 1927, 21 years.

Q. Will you please give us a brief resume of your experience in the jewelry business in that period of time?

A. I left college in 1927 on my father's death to

(Testimony of Leonard Bloch.)

go into the retail store in Portland, Oregon. I remained there until 1936, [325] at which time I came to San Francisco to go to work for S. H. Friend.

Q. And are we to understand that you have been with S. H. Friend since your arrival here in 1936, since 1936? A. Since 1936, sir.

Q. What was the name of the store in Portland? A. Felix Bloch.

Q. And who was Felix Bloch?

A. My father.

Q. And do you have any personal knowledge of what period of time the retail establishment known as "Felix Bloch" was operated in Portland?

A. Felix Bloch was established in 1915. Before that it was Markson Bloch. My uncle started in Portland in '88, under the name of Dan Markson Co. My father joined him in about '08, and they were in partnership until '15, and then they split up and each one had his own store.

Q. Now what was the nature of your duties in the store in Portland?

A. Well, my father had passed away and I was brought in there to run the store with the help of a man who had been with us for quite a few years.

Q. That was a retail establishment?

A. That was a retail establishment.

(Testimony of Leonard Bloch.)

Q. Did you personally wait on customers in that store? A. Yes. [326]

Q. Did you do that rather constantly, or was it infrequent?

A. I was rather young then, and I waited on, at that time, most of the customers with the exception of the diamond customers, and at that time the diamond customers, we had a man who was very experienced and he handled a lot of the diamond customers at that time, so I handled some of them.

Q. Now what has been your experience in the jewelry trade since you came to work for S. H. Friend in San Francisco?

A. I have traveled on the road covering the six western states for the firm since my start with S. H. Friend in 1936. Up until the death of Mr. Friend, Sr., last May, that is. At that time I have spent, since then I have spent more time in the office than I have out on the road, though I have been out on two trips since his death.

Q. Now you spoke of covering the six western states. Will you explain that to the court? What do you mean by "cover"?

A. Well, we have accounts in quite a few of the towns, and I call on those accounts with the merchandise and we don't cover every city in every state, but quite a few of the cities in every state on the coast, including Idaho, Nevada and Utah.

Q. Now were the establishments you called on in

(Testimony of Leonard Bloch.)

that period of time the wholesale or retail establishments?

A. All retail stores.

Q. And I assume your calls were made directly on the proprietors of those stores? [327]

A. 99 per cent of the cases. But in a few cases they did have buyers, but most of the stores, the owner was the buyer himself.

Q. By the way, in that period of time that you were traveling for S. H. Friend, what was its line of products that you were offering for sale?

A. Loose diamonds, diamond mounted rings, and mountings.

Q. By "mountings," you mean an unset ring?

A. An unset ring, yes, sir.

Q. Now in this period of time about which you have been speaking, have you become acquainted with Granat Bros.?

A. Yes, sir.

Q. And for how long have you known of Granat Bros.?

A. I have known of Granat Bros. since I have been in the jewelry business, and that is 1927.

Q. Now have you heard at any time during the course of your experience of a product put out by them under the trademark "Wed Lok"?

A. Yes, sir.

Q. And for what period of time have you known of that mark?

A. From the year about 1937 or '38.

Q. That was your first knowledge of it?

A. I believe that's right, sir.

(Testimony of Leonard Bloch.)

Q. For what period of time did you observe that product being marketed, commencing at the date you gave?

A. Well, the word "Wed Lok" appeared in advertising, to my [328] knowledge, up until the war, and then it was not advertised to my knowledge during the war period at all. And then it came out again about 1946 or '47, sir.

Q. And you, of course, had knowledge of the fact since the resumption after the war?

A. Yes, sir.

Q. Now do you know of the defendant, Feature Ring Co.? A. Yes, sir.

Q. And how long have you known of that defendant?

A. We have done business with them for a period of about twelve years.

Q. And what can you say as to the reputation of the Feature Ring Co.?

A. We have always had a fine product from them.

Q. And you, of course, know Mr. Henry Peterson, connected with that firm? A. Yes.

Q. What can you say as to Mr. Henry Peterson's reputation?

A. We had Mr. Henry Peterson doing some work for us before he was with the Feature Ring Co., too, and it has always been absolutely tops.

Q. Has S. H. Friend purchased anything from Feature Ring Co.? A. Yes, sir.

(Testimony of Leonard Bloch.)

Q. When did they do that?

A. Well, approximately twelve years ago. I believe that is—[329] I haven't the exact—I wasn't in the office at that time, but we have been doing business with them for approximately twelve years.

Q. Do you know of a product sold by Feature Ring Co. under the trademark "Feature Lock"?

A. Yes.

Q. What is it?

A. It is a set of rings that lock together, produced by Feature Ring Co.

Q. When did you first learn of this article?

A. The salesman who showed me the article, I saw it in the early part of January, 1948.

Q. And has S. H. Friend purchased that article, so far, from Feature Ring Co.?

A. Yes, sir.

Q. When was it first purchased, according to your recollection?

A. At the same time that the article was shown me, and in January of '48.

Q. Has S. H. Friend sold this article to its customers?

A. Yes, sir.

Q. Will you state to the court where that is sold, this product, speaking now of territory?

A. In the six states that we cover, and eight accounts.

Q. Did you personally have anything to do with the sale of the product marked "Feature Lock"?

A. Yes, sir. I took the original samples out

(Testimony of Leonard Bloch.)

and sold the product throughout the territory, myself.

Q. You exhibited the samples to the retail trade?

A. Yes, sir.

Q. In the territory worked by you?

A. That's right.

Q. Now in making such sales or exhibiting the samples to the trade, what did you tell the people about that product?

A. I told my customers that we had a locking ring unit that was the finest thing on the market, and that it was the best product that we had been able to find to put on to locking units.

Q. About how many accounts did you personally contact when you were traveling for S. H. Friend, exhibiting or displaying the Feature Lock Rings?

A. Approximately 200 to 250 accounts.

Q. In the several western states of which you spoke?

A. That's right.

Q. To your personal knowledge, Mr. Bloch, are any of these accounts also Granat Bros. accounts?

A. Yes, sir.

Q. Could you name one of such?

A. Yes, sir, Burmeister & Anderson, in Oregon City; S. E. Needham, in Logan, Utah; Dunbar's in Yakima, Washington. Do you wish me to continue?

Q. That is sufficient. Have you continued to sell the Feature [331] Lock rings?

A. Yes, sir.

(Testimony of Leonard Bloch.)

Q. For S. H. Friend Co.? A. Yes, sir.

Q. What is S. H. Friend's policy with respect to advertising, Mr. Bloch?

A. Well, we only advertise in the local trade journal. We do no advertising for ultimate consumers purchasing. We never have, and our advertising is solely confined to the Pacific Goldsmith, which is the local trade journal.

Q. Had that been the continuous policy during the period of your connection with S. H. Friend?

A. That's right.

Q. Now, to your knowledge, has S. H. Friend advertised the Feature Lock ring in the Pacific Goldsmith? A. Yes, sir.

Q. I will show you a page from the June 1948 Pacific Goldsmith, page 64, and will ask if you can identify that as an ad of the S. H. Friend Co.?

A. Yes, sir.

Mr. Naylor: For continuity's sake, I would like to offer that as defendant's next, your Honor.

The Court: Defendant's 34.

(Page 64 from June 1948 Pacific Goldsmith was thereupon received in evidence and marked Defendant's Exhibit 34.) [332]

Q. (By Mr. Naylor): Now, during the period of your personal experience with Feature Lock, and your call on your trade and your sales to the trade, have you ever heard of any confusion by anyone between "Feature Lock" rings and the so-called "Wed Lok" rings of Granat Bros.?

(Testimony of Leonard Bloch.)

A. Absolutely none. There has never been a question of confusion brought to my attention in the two names whatsoever. I have never heard of it. I have never had a customer so inform me, nor have I seen that.

Q. Would you expect a customer to bring such an incident to your attention if it had occurred?

A. Very definitely.

Q. Why?

A. Well, if I overcharge them 25 cents, they sure write a letter and give us heck for that, and I am sure that they would on a deal like this. They write us all kinds of things.

Q. And yet you have never had any such report from a customer?

A. No. 90 per cent of our customers are personal friends of mine, and I hear from them on a lot of things besides business, and I am sure they would write me or tell me about any confusion that might exist.

Q. Can you recall a single instance where anyone related orally a so-called instance of confusion between the two brands?

A. I have never heard of an instance of confusion.

Q. And are you equally as positive concerning letter reports of [333] any such instances?

A. We have never had one in the office, and I believe I have seen all the correspondence that has come in.

(Testimony of Leonard Bloch.)

Q. Mr. Bloch, as one familiar with the trade and the usages of the trade, is there in your opinion any likelihood of confusion between the words "Wed Lok" and "Feature Lock"?

Mr. Mellin: I object, your Honor, on the ground that that is the Court's duty.

The Court: Sustained.

Q. (By Mr. Naylor): What do the words "Feature Lock" mean to you, Mr. Bloch?

A. The words "Feature Lock," to me, mean that it is a ring set and it locks, put out by Feature Ring Company.

Q. What does the word "Lock" mean to you when used in connection with the name of a ring?

A. The word "Lock" in connection with a ring would mean that ring set that actually locks together.

Q. In buying for resale do you and S. H. Friend make any difference and distinction between whether the article is die struck or cast?

A. No, sir.

Q. Is there a preference between these two methods of ring manufacture?

A. Oh, we prefer the casting because of the maneuverability, the innumerable designs that are possible to put out in casting [334] that are hardly feasible under the die-struck process.

Q. Has that been your experience for any appreciable period of time?

A. Well, it has been always, as far as my knowl-

(Testimony of Leonard Bloch.)

edge goes, when castings first came in, and if I remember right, a good casting came to the public, or the manufacturing process, in about 1938; and since that time, why, we have been using a lot of castings.

Q. Calling your attention again to Plaintiff's Exhibit 34, will you examine that and state whether or not the name of the manufacturer of that product appears upon it (handing to witness).

A. No, it does not.

Q. Is it the practice of S. H. Friend, when advertising a product handled by it, to include the name of the manufacturer in the advertisement?

A. We never do. We are selling our own name, and our customers are selling their own names. We never include the manufacturer's name on any product of ours.

Q. According to your personal observation, is that rather prevalent in the trade?

A. It is quite prevalent in the trade, especially in the diamond ring end of it. Most jewelers prefer to sell diamonds under their own name, because that is the reputation that has been built up in that particular town. Actually there has never been a successfully advertised national, nationally advertised [335] diamond ring. There are quite a few people, I would say three or four or five, who nationally advertise their ring, but no diamond ring has ever had the full public acceptance as has been found in the watch industry or the silver

(Testimony of Leonard Bloch.)

business, for example, or those ends of the jewelry business. It has been tried for many years, but no one has ever successfully put a real big diamond ring nationally known, a nationally known item, in the jewelry stores. The jewelers still prefer to sell the diamond rings under their own name, because that is their reputation in the local town.

Q. Now, what was your experience in that regard when you were in the retail store in Portland, Oregon?

A. We only sold diamonds under our own name; no other name was ever mentioned.

Q. Was the brand name, if there was a brand name, branded into the ring? Was a brand name mentioned to the ultimate purchaser?

A. No, sir.

Q. That has been your experience?

A. That has been my experience, yes, sir.

Q. What is the usual procedure, looking at it from the standpoint of the retail jewelry store clerk, when a person comes in to purchase rings of the type about which we are speaking here?

A. I don't think I understand the question.

Q. Well, assume that I am coming into a retail store and that [336] you are the clerk behind the counter. What is the clerk's approach to the problem?

A. Well, if they are asking for a diamond ring, which most of them do, you try and find out first

(Testimony of Leonard Bloch.)

in what price range they want it, and secondly, what particular style, whether wide or narrow. And you try to satisfy them from the stock that you have in your case.

Q. Now, that has been your experience?

A. Yes, sir.

Q. Now, in your experience, would you say that it was common practice in a transaction of that sort to mention to the ultimate retail purchaser the brand name of a manufacturer, assuming that you had rings in stock with the brand name upon them?

A. Well, no, it is not the general practice to mention that name.

Q. In view of what you have just stated, will you please state what purpose, in your experience, is served by having a brand name upon a ring, of the manufacturer?

A. Well, of a ring manufacturer? Well, if we are referring to a brand name, "Wed Lok" was a brand name in 1937 and '38 that I had heard about. At that time they did not have a locking unit on the market. At least—and I covered the West Coast sufficiently thoroughly to know—it was never marketed, if they had a locking unit. There was a fitting in their unit that was contoured, and the contoured set was, while it prevented the [337] ring from turning a little bit, it did not actually lock. It did not prevent the wedding ring from turning on the hand. At that time no one in the industry tried to put out a ring in

(Testimony of Leonard Bloch.)

competition to it. There was no rush of rings bearing the name "Lock" on them, because there was merely designation of a style, rather than a unit that would work. At the present time there is a demand for locking ring sets. The locking ring sets are a factor in the business, and retail customers called on us for locking sets. When the locking unit was shown us, we were interested in it.

Q. Now, what purpose, to you in the business of S. H. Friend, does a brand name upon a ring serve? What purpose is served by the appearance of the brand name? A. To us?

Q. Yes.

A. With the exception of "Feature Lock," nothing, none. There is no use of a brand name with the exception of "Feature Lock." We use the "Feature Lock" name as descriptive, because of the word "Lock," and "Lock" is the only word that in short will actually describe to the general public what the ring does.

Q. Now, since the receipt by S. H. Friend of a notice of infringement, and since the institution of this action, have you received any letters or any verbal cancellation of orders for Feature Lock rings?

A. Would you repeat that, please? Since what time? [338]

Mr. Naylor: Would you read that, Mr. Reporter?

(Question read.)

(Testimony of Leonard Bloch.)

A. Yes, sir, we have.

Q. Have there been one or more than one such instances?

A. There have been more than one.

Q. Have you produced here any communications from customers along that line?

A. Yes.

The Bailiff: The Court desires a short recess.

(Recess.) [338-A]

Q. (By Mr. Naylor): Just at recess, Mr. Bloch, you were exhibiting to me a letter from a customer. The letter is rather brief; I think, your Honor, it might be read right into the record. Will you state who it is from?

A. S. E. Needham, Jr., S. E. Needham Jewelers, Logan, Utah.

Q. Are you acquainted with those people?

A. Well, I have known them and done business with them for about thirteen years.

“S. H. Friend Co.

San Francisco, California.

Gentlemen:

“I received the Feature Lock merchandise, but we are afraid to advertise it because of the suit Granat instituted against you and another dealer. Have you any suggestions? How about changing name? What name, or would you assume all risk?

Yours,

S. E. Needham, Jr.”

(Testimony of Leonard Bloch.)

Q. Is that letter dated, by the way, Mr. Bloch?

A. No, there isn't—

Q. Is there any notation on it by which we can fix the date as to when you received it?

A. Well, the merchandise was shipped most likely in the middle of—late May or early June, and I would judge it was sent sometime within a week or so after he had received the merchandise. I didn't notice the letter wasn't dated or I would have checked up [339] on when the invoice was sent to him, but it was most likely late May or early June when we made the shipment to him. It may have been late June.

Q. Was the letter brought to your personal attention? A. Yes, sir.

Q. What action, if any, was taken by S. H. Friend with respect to the contents of that letter?

A. I wrote them a letter and told them to go ahead and advertise under the name "Feature Lock" and that the Feature Ring Co. were backing us and would assume all risks.

Q. Now earlier in your testimony you spoke of the fact that there had been customers of yours, and by yours I mean S. H. Friend, who are also customers of Granat. A. Yes, sir.

Q. And I assume you sold ring sets to these customers? A. Yes, sir.

Q. What is your explanation as to why a single customer would be buying ring sets from you and buying Granat Bros.' products at the same time?

(Testimony of Leonard Bloch.)

A. Well, there are quite a few reasons for that. First of all, I think that the Feature Lock product is a better product. Secondly, Wed Lok only sold completed units to retail customers.

Q. Will you explain what you mean by completed units?

A. Yes. One part of the diamond business is selling diamond rings. There is another great part of the diamond business which [340] is selling mountings for remounting customers' rings, either remounting the small stones and the center stone in the rings or just remounting just the center stone in the rings. These blanks, so-called, were not available from the Granat Manufacturing Company's Wed Lok series, nor were the dealers, to my knowledge, allowed to buy the semi-mounted sets in which they could use their own set of diamonds that they had in stock.

Now a lot of the dealers like to move their own merchandise that they have in stock rather than to buy more stock at that time and put in complete sets.

In the first place, the unit of Feature Lock usually could be sold at—when Wed Lok first came out, the minimum retail set was in the neighborhood of \$200. In Feature Lock we could give them a unit to sell completely mounted at \$125.

We actually believed that the Feature Lock unit mounted with the same quality of diamonds as the Wed Lock units was sold at a less expensive figure

(Testimony of Leonard Bloch.)

than the Wed Lok, and the customers so thought.

Mr. Naylor: That is all.

Cross-Examination

By Mr. Mellin:

Q. Mr. Bloch, isn't it a fact that—we are talking now about ring quality—isn't it a fact that a hand tooled or *toll* made ring is usually about twice as expensive as a cast ring?

A. That depends entirely on what the ultimate production, in [341] my opinion——

Q. I mean, let's take——

Mr. Groner: Let the witness finish.

Mr. Mellin: I didn't know he was not finished.

A. Well, the original dies are expensive to make on die cut rings. If you can get sufficient distribution of any given pattern, then the cost per unit would go down. A fine casting, in my opinion, is equal to fine die stuff.

Q. But in the really finer rings, they are usually hand tooled, aren't they?

A. I would say that is the exception to the rule that they were hand tooled.

Q. Now you said that you had about—by the way, in this letter that you have been reading into the record—did you offer it in evidence?

Mr. Naylor: No, I didn't.

Mr. Mellin: Oh, I beg your pardon.

Q. ——that you were referring to, did they actually cancel the order? A. No, sir.

(Testimony of Leonard Bloch.)

Q. So you lost no business? A. No, sir.

Q. Is this the only letter that you could find of like import?

A. Yes, sir, that is the only letter I could find of like import. Most of the customers when I originally showed them the item, [342] I told them that if there was any question that we would back up—that the Feature Ring Co. would back them up.

Q. In other words, you anticipated that there would be trademark litigation? A. Yes.

Q. Now——

A. May I explain that?

Q. Why certainly.

A. Surely. Granat Bros. have been in several court appearances for various reasons over a period of years. They have had various confusions with other manufacturers, and I had no desire to in any way conflict without first being assured.

Q. And now you mean by that—do you have any particular suits in mind, Mr. Bloch?

A. In what respect?

Q. You say they were involved in various suits. You mean litigation?

A. They had a dispute with Albert Samuels Co.

Q. A local jeweler? A. Yes, sir.

Q. Who else?

A. Well, recently they had a question of one with Gomez.

Q. That was a patent suit?

A. That was a patent suit.

(Testimony of Leonard Bloch.)

Q. And you know, of course, that Gomez was held to be an infringer [343] in this court?

A. Yes, sir.

Q. And those are the two you had in mind when you said "various"?

A. No, sir, there was one, but I——

Q. There was one in 1928?

A. I think there was, which I have forgotten the name of.

Q. Those are the various suits. Now you say that you called on 200 to 250 retailers?

A. That is right.

Q. Now you know, and I think you testified that the Granat Bros. select the jewelers who handle Granat's products in various towns, is that correct?

A. No, sir.

Q. Is it a fact, then——

A. Is what a fact, sir?

Q. That they sell to only a certain number of jewelers in a town?

A. In certain towns, yes. In other towns, no.

Q. How many jewelers in any one town have you ever seen handling Wed Lok?

A. I would say up to three.

Q. And that would be in San Jose?

A. I had reference to San Jose—but I had reference to rather smaller towns, but San Jose might be one.

Q. That would be up to three dealers in a town which handle [344] Feature Lock, and in San Jose there were probably 30 to 35 jewelers?

(Testimony of Leonard Bloch.)

A. No, sir.

Q. Retail jewelers? A. No, sir.

Q. How many would you say?

A. Possibly two or three.

Q. Only two or three retail jewelers in San Jose? A. That is right.

Q. You mean that would be handling Wed Lok?

A. That is right.

Q. The question was, how many retail jewelers are there in San Jose? You didn't understand me, I am sorry. Probably 30 to 35?

A. Probably 30 to 35.

Q. So that Granat Bros. to your knowledge would only sell the three and not the other 32 or 33?

A. That is my understanding.

Q. Now you call on the other 32 or 33?

A. Not of necessity. I may call on the two or three that also sell theirs.

Q. Now out of these 250 customers did you have a list of how many of those that actually purchased Wed Lok rings?

A. I never made an actual list, but I judge between a hundred—Feature Lock rings, you say?

Q. Yes. [345] A. Between 125 to 150.

Q. That would be throughout your whole territory? A. That is right.

Q. And it is true, is it not, that in the cases of the smaller towns, they would buy one mounting, isn't that so? A. No, no, that is not so.

Q. What is the fact?

(Testimony of Leonard Bloch.)

A. I would say that the average unit sold was somewhere between, I would say, an average of about four to five.

Q. Four to five? A. Four to five units.

Q. And what do you sell them to the jewelers for?

A. I don't understand you.

Q. I mean, what do you sell the units to them for?

A. You mean in money?

Q. In blanks, yes. What do you sell a set of findings for?

A. We sell a set of findings for approximately \$19 or \$20, but I don't—I don't quite see—we sell very few blanks. The average unit sale was somewhere in the neighborhood of \$400.

Q. The average unit sale was \$400?

A. Yes, somewhere around there, yes, sir.

Q. And in some of those rings they sold for \$90?

A. Some of those rings were sold for as high as \$125 and some as low as \$60 or \$50.

Mr. Groner: I am confused. May I have that last answer [346] read back?

The Court: Yes.

(The reporter read as follows:

“A. We sell a set of findings for approximately \$19 or \$20, but I don't—I don't quite see—we sell very few blanks. The average unit sale was somewhere in the neighborhood of \$400.

“Q. The average unit sale was \$400?

“A. Yes, somewhere around there, yes, sir.

“Q. And in some of those rings they sold for \$90?

(Testimony of Leonard Bloch.)

“A. Some of those rings were sold for as high as \$125 and some as low as \$60 or \$50.”)

Q. (By Mr. Mellin): By unit you mean a unit sale to a jewelry store? A. That is right.

Mr. Groner: May I ask what the \$400 was?

Mr. Mellin: A unit sale. That is how much he would give him in an order.

Mr. Groner: Oh, I see, for two or three sets?

A. The average orders are two or three or four or five or six sets, the average would run around \$400 for any particular customer. Some ran higher, some less.

Mr. Groner: I thought you meant that \$400 was a price per set.

Q. (By Mr. Mellin): As a matter of fact, Mr. Bloch, your concern [347] couldn't handle Granat rings for love or money, could they?

A. I don't think we would want them.

Q. I mean, you cannot?

A. That I understand.

Q. You have always understood that?

A. We haven't tried to handle Granat rings. We have no reason to handle Granat rings.

Q. You know, of course, from your dealings with Granat, that Granat is very jealous even of its self-assumed reputation?

A. I wouldn't say that Granat were jealous of their reputation.

Mr. Mellin: That is all.

Mr. Naylor: No redirect.

(Testimony of Leonard Bloch.)

Mr. Mellin: By the way, may I have him for one or two questions? I forgot one thing. Would you mind, Mr. Bloch?

Q. If a retail jeweler was handling Keepsake rings, don't you think you would make that fact known to his customers?

Mr. Naylor: May I have that question read?

Mr. Mellin: If a retail jeweler were handling Keepsake rings, wouldn't he be quite proud to make that fact known to his customer that was a prospective customer?

A. No. There is only—your Honor, may I explain that this way—I mean I don't wish to put any manufacturer's name in jeopardy or anything. You have Keepsake, I don't. In my opinion, from selling on the road, the only reason any jeweler ever bought Keepsake was to get the free advertising, the free displays and [348] the free boxes that were given with them.

Q. That is right, they would sell Keepsakes because the public knows of Keepsake in his advertising?

A. No; the small jeweler cannot afford to put out mats, cannot afford to put out fancy window displays, cannot afford fancy boxes, so he buys rings that he certainly must know are over-priced, but he doesn't feel badly, because he gets all the rest of the merchandise free, he doesn't have to pay for it, and that is the only reason a jeweler sells Keepsakes.

(Testimony of Leonard Bloch.)

Q. How about "Art-Carve" by Wood?

A. "Art-Carve" is a good product.

Q. When you hear the words "Art-Carve," do you think of Woods, J. R. Woods?

A. That is right.

Q. And when you hear "Orange Blossom," you think of Traub? A. That is right.

Q. They are nationally advertised rings, aren't they? A. That is right.

Q. And they have been tremendously successful, haven't they?

A. What is "tremendously successful"?

Q. Well, they have been successful—I will take "tremendously" out.

A. It has been a successful operation.

Q. Over a long period of years?

A. Yes, sir. [349]

Q. So at least in this instance your dogmatic statement that there has been no successful ring advertising nationally would not apply, would it?

A. I still insist if you walked out on the street and asked the first ten people you met if they had ever heard of "Art-Carve" they wouldn't associate it with a diamond ring.

Q. Wouldn't associate it with rings at all?

A. One out of ten might associate it with rings; one out of ten. That is my opinion.

Q. And the word "Carve" in some degree is descriptive of those rings, isn't it? Some of them are hand tooled?

(Testimony of Leonard Bloch.)

A. I have never thought of that. I wouldn't know.

Mr. Mellin: I see. Thank you.

Mr. Groner: That is all.

Will you be sworn, please, Mr. Magoon?

ORRIN G. MAGOON

called on behalf of the defendant, sworn.

Direct Examination

By Mr. Groner:

Q. Where do you live, Mr. Magoon, and what is your occupation?

A. I live at 7364 Stockton Ave., El Cerrito, California; I am manager of W. R. Burke's jewelry store in Berkeley.

Q. How long have you been in the jewelry business? A. Going on 28 years. [350]

Q. And where have you been engaged in business during that period?

A. 23 years in San Francisco, five years in Berkeley.

Q. Are you acquainted with the parties to this litigation? A. I am.

Q. The plaintiff? A. Yes.

Q. And the defendants, or at least some of them?

A. That is right.

Q. Have you handled some of the products of the defendant Feature Ring Co.?

A. Very few.

(Testimony of Orrin G. Magoon.)

Q. In your 28 years' experience in the jewelry business, can you state what is the tendency of the retail jeweler in selling to the public and the tendency of the public in buying diamond rings, for example?

A. I might, yes, sir. In all my years in business we have sold our firm's, nobody's ring. I don't stress anybody's name at all.

Q. Do you think a trade name on an article such as a ring is valuable so far as the public is concerned?

Mr. Mellin: May I object to that, what he thinks I don't think is material here.

Mr. Groner: May it please your Honor——

The Court: Overruled.

A. I don't think it has any great bearing on the subject. It [351] hasn't, so far as I am concerned.

Q. In your experience have you ever acquired any knowledge of any nature indicating confusion between locking ring sets of the plaintiff Granat and of the defendant Feature Ring Co.?

A. No.

Mr. Groner: Witness with you, sir.

Mr. Mellin: No cross-examination.

Mr. Groner: Thank you, sir.

Mr. Naylor: If the court please, in winding up the defendants' record, there are certain documentary exhibits we should like to offer for the sake of completeness of the record. I have first here a certified copy of the abandoned application for

registration of trademark "Wed Lok," serial No. 352821, filed June 18, 1934, application having been made by Joseph Granat, no objection.

Mr. Naylor: Defendant's next, please.

(Abandoned application for "Wed Lok" registration, No. 352821, was thereupon received in evidence and marked Defendants' Exhibit No. 35.)

Mr. Naylor: Next I have a certified copy of the application which matured into registration No. 185365 of June 10, 1924, only application of Strauss & Strauss, which was the mark acquired by, or alleged to have been acquired by, plaintiff in this action.

Mr. Mellin: No objection. [352]

(Registration No. 185365 of June 10, 1924, was thereupon received in evidence and marked Defendants' Exhibit No. 36.)

Mr. Naylor: Specifically we have a list here or, rather, a booklet or folder of third party lock, l-o-c-k, and l-o-k registrations which were pleaded in defendants' answer in this proceeding, and those were marked for identification upon the San Francisco depositions. They haven't yet been offered. I should like to offer them at this time pursuant to the stipulation which permits the filing of printed copies as distinguished from certified copies. [353]

* * *

The Court: Well, you may offer them and I will reserve a ruling upon them.

Mr. Naylor: Now, may I amend, or rather add two additional ones to that which have come to our attention since the pleadings were drawn here? Unfortunately, we don't have extra copies of these.

Mr. Mellin: Yes, one is in '43 and one in '36. The same objection will lie to both of them.

Mr. Naylor: Defendants' next?

The Clerk: As one exhibit?

Mr. Naylor: Yes, one exhibit.

The Clerk: 37.

(Patent Office registrations were received in evidence and marked Defendants' Exhibit 37.)

Mr. Naylor: Reference has heretofore been made, your Honor, [361] to trade-marks, the book "Trade-Marks of Jewelry and Kindred Trades." We should like to have before your Honor specific references to pages within, which we have marked, wherein there appear under the several categories of jewelry marks which include "Lock" or "Lok."

Mr. Mellin: I object to that, your Honor, as being of no probative value. This certainly doesn't carry the presumptions that the patents do, that they were ever used. And certainly it doesn't show the date of use.

Mr. Naylor: We are offering it, Mr. Mellin, merely for the proposition that here is a manual published within the jewelry trade, used by the jewelry trade, within which——

Mr. Mellin: Well, this is in 1943.

Mr. Naylor: —there is contained a plurality of marks, which include “Lock” and “Lok” in the jewelry trade. There again, we think it is proper for your Honor to have before him anything which, within the trade, indicates the practice of the trade with respect to this word “Lock” and “Lok,” or anything, any other spelling of it.

Mr. Mellin: If your Honor please, this book is allegedly published in 1943. It carries no presumption that even the matter published in it is correct. It is purely hearsay from that point. There is no foundation laid that any of it was ever used or that the marks were ever used.

Mr. Naylor: You are not disputing that the book was [362] published, are you, Mr. Mellin?

Mr. Mellin: I can see it is in print. I think that—

The Court: I believe the objection is clearly good as to hearsay, no foundation for its reception. Sustained.

Mr. Naylor: May this be marked for identification, and may we submit authorities upon it?

The Court: Very well, you may do that if you care to.

Mr. Naylor: In that connection, for the purpose of the record, we would like to have the record show that certain of the marks appearing at the following pages have been marked: Page 2, page 22, page 32, page 106, 108, 112, 114, 134 and 140.

The Clerk: Defendant's 38 for Identification.

(Book entitled "Trade-Marks of Jewelry and Kindred Trades," with certain pages marked, was marked Defendants' Exhibit 38 for identification.)

Mr. Naylor: I understand it may be stipulated, your Honor, that the following publications contained a notice of the fact of the filing of this litigation, supplied by the plaintiff: The Jewelers' Outlook for August 1948, the National Jeweler for September 1948, and the Southern Jeweler for February 1949.

Finally, we have the New York depositions, taken on behalf of the plaintiff, and the several exhibits identified therein. We will offer those as defendants' next, if your Honor is willing.

Mr. Mellin: That is all with the exception of Mr. Peterson? [363]

Mr. Groner: It is perfectly agreeable to us that he be deleted. He has not been——

Mr. Mellin: Yes, that deposition of Mr. Peterson, the exhibits attached to his deposition, be deleted? Otherwise I have no objection.

Mr. Naylor: The final piece——

Mr. Mellin: Yes, apparently my associate didn't understand. That is all of Mr. Peterson's deposition, the oral testimony and the exhibits?

Mr. Groner: Surely; the whole thing goes out. All the exhibits actually have gone in during the last day anyway.

Mr. Mellin: In another form.

Mr. Groner: That is correct. So we have nothing but testimony, and that is entirely agreeable with us.

The Clerk: Defendants' No. 39.

(Depositions of Messrs. Beer, Stamper, Barnett and Ostrin referred to were received in evidence and marked Defendants' Exhibit 39.)

Mr. Naylor: We have, finally, the San Francisco depositions. What is your disposition with respect to those?

Mr. Mellin: You have the right to offer them.

Mr. Naylor: We will offer the discovery depositions, and their several component exhibits, as defendants' next in order.

The Court: Very well. [364]

Reporter's certificate attached.

[Endorsed]: Filed November 22, 1949.

[Endorsed]: 12407 and 12408. United States Court of Appeals for the Ninth Circuit. Samuel H. Friend, S. Herbert Friend, Leonard V. Bloch, copartners doing business under the firm name and style of S. H. Friend and Feature Ring Co., Inc., Appellants, vs. Granat Bros., a corporation, Appellee. Granat Bros., a corporation, Appellant, vs. Samuel H. Friend, S. Herbert Friend and Leonard V. Bloch, copartners doing business under the firm name and style of S. H. Friend and Feature Ring Co., Inc., Appellees. Herbert Brown and Feature Ring Co., Appellants, vs. Granat Bros., a corporation, Appellee. Granat Bros., a corporation, Appellant, vs. Herbert Brown and Feature Ring Co., Inc., Appellees. Transcript of Record. Appeals from the United States District Court for the Northern District of California, Southern Division.

Filed November 22, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.